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WORK REPORT

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INTRODUCTION

The State Commission for the Supervision of Public Procurement Procedures (hereinafter: “the State Commission”) is a specific, independent and autonomous quasi-judicial state body providing review in public procurement procedures, awarding concessions and selecting a private partner in public-private partnership projects.

The State Commission was established in 2003, and from the very beginning it based its work on three basic values: transparency, efficiency and independence. These three basic principles in the work of the State Commission have been developed over the years through processes of digital transformation of the appeals procedure in order to achieve maximum transparency, through the internal digital transformation of operations with the aim of increasing efficiency, and through constant and continuous work to respect the highest ethical principles of employees of the State Commission in order to ensure independence and impartiality in work as a prerequisite for effective legal protection in an area that is considered particularly sensitive to corruption.

The role of the State Commission in the public procurement system, awarding concessions and selecting a private partner in public-private partnership projects, is reflected not only in rapid and effective corrective action in individual cases of illegalities, but also in general preventive action by reducing corruption risks through the public announcement of all decisions of the State Commission. The general preventive action of the State Commission is also reflected in the prevention of irregularities in future public procurement procedures by creating legal practice. In addition to the above, the State Commission has the chance and the obligation to point out the possibility of further improvement of practice on the basis of data and observed occurrences in appellate proceedings, by submitting annual reports within the obligation to state its view and assessment of the situation in public procurement in general and in legal protection, and also in procedures and legislation within the public procurement system.

During the last few years, after the introduction of the sole jurisdiction of the High Administrative Court of the Republic of Croatia (hereinafter: the High Administrative Court) to decide on administrative disputes initiated against the decisions of the State Commission, The State Commission made significant efforts to contribute to legal certainty in the public procurement system through daily harmonization with the practice of the High Administrative

Court and thus strengthen the trust of all stakeholders of the public procurement system in the established institutional framework of legal protection.

The State Commission always emphasizes the continuity and dedication of the professional staff employed in the State Commission as its greatest value, who despite the increasing number and increasing complexity of appeal cases, and despite the lack of financial resources for professional development, with their dedication and work enthusiasm for several years in a row, perform this extremely demanding job at the highest professional level, with as little restriction as possible and while preventing the extension of the duration of the public procurement procedure. Achieving this goal represented a particular challenge during 2021 due to extraordinary circumstances caused by the pandemic and the earthquake that hit Croatia. Despite all the challenges, and thanks to the dedicated and persistent work of the employees of the State Commission, and thanks to the exceptional efforts made in recent years in the digitization of the appeals procedure as well as the digitization of internal operations, in 2021, as well as in the previous year 2020, the State Commission managed to again achieve exceptional results that surpassed previous years in terms of reducing the average deadlines for resolving appeal cases as well as reducing the number of decisions of the State Commission that were annulled by the High Administrative Court. By achieving these results through ensuring the smooth functioning of legal protection within the framework of the public procurement system, the State Commission in 2021 made its contribution to the reduction of obstacles for the expected rapid economic recovery and investments.

1. ABOUT THE STATE COMMISSION

The State Commission is an autonomous and independent state body responsible for deciding on appeals related to public procurement procedures, concession award procedures and private partner selection procedures in public-private partnership projects. Specific quasi-judicial competence is reflected in its structure and procedures, as well as in the binding nature of its decisions.

Pursuant to Article 18, paragraphs 1, 2 and 3 of the State Commission for the Control of Public Procurement Procedures Act (Official Gazette, No. 18/13, 127/13, 74/14, 98/19 and 41/21, hereinafter: the State Commission Act), the State Commission is obliged to submit a report on its work to the Croatian Parliament once a year, and, at the request of the Croatian Parliament, it is obliged to submit a report for a period shorter than a year. Data and analyses of appellate cases in public procurement procedures, concession award procedures and private partner selection procedures in public-private partnership projects are an integral part of the annual report.

Considering the thoroughness and depth of insight into the application of the provisions of the Public Procurement Act (Official Gazette, No. 120/16, hereinafter: “PPA 2016”), and especially the procedural provisions on review, an assessment of the situation in public procurement, which refers to both public procurement and review procedures, as well as the institutional framework of public procurement, is an integral part of the State Commission’s Report.

1.1. The Structure and Organisation of the State Commission

The Decree on the Internal Structure of the State Commission for Supervision of Public Procurement Procedures (Official Gazette 84/13 and 145/14, hereinafter: “the Internal Structure Decree”) regulates the internal structure, organization, modalities of work and other issues of importance for the work of the State Commission.

The State Commission consists of the members of the State Commission and professional staff.

The State Commission, in a narrower sense, consists of nine members, one of whom is the President, two Deputy Presidents, and six members, who have a specific status because they are appointed for a term of five years by the Croatian Parliament, at the proposal of the Government of the Republic of Croatia, with pre-prescribed requirements for appointment and

reasons for dismissal. They have the status of officials only in terms of the legislation governing the prevention of conflicts of interest, but not the legislation governing the obligations and rights of state officials. The basic function of the members of the State Commission is to render decisions in review procedures. The employment status of members of the State Commission is regulated by the Law on Amendments to the State Commission for Control of Public Procurement Procedures Act (Official Gazette 41/21), which regulates the rights and obligations of members of the State Commission, its bodies, precisely determines the beginning and end of the mandate, adds provisions related to the termination of the mandate by force of law and prescribes a public call as a method of selecting candidates to be proposed by the Government of the Republic of Croatia to the Croatian Parliament. These amendments to the State Commission Act are the result of many years of pointing out (in the State Commission's Reports) that there is underregulation and that there are shortcomings to the existing legislative solution. The adopted amendments contribute to the transparency and efficiency of the work of the State Commission, and have an appropriate anti-corruption effect, given that the rights of members of the State Commission are regulated regarding to the expiration of their mandate. The mentioned amendments to the State Commission Act also eliminated the corruption risk, which arose from the unregulated status of the members of the State Commission, and which the State Commission pointed out in its previous Work Reports.

As one of the key institutions in the public procurement system, the State Commission is obliged to serve the public interest and ensure the highest standards of integrity. The State Commission therefore places responsibility, transparency and the highest ethical standards at the center of its actions. Adherence to these principles is important for the credibility and authenticity of the State Commission, as well as citizens' trust in the legal protection system in general, but also in the State Commission as an institution. Professional ethics and high standards of behavior are key prerequisites for preserving the reputation of the State Commission. Therefore, at the end of 2021, the State Commission drafted a proposal for a Code of Ethics for all employees of the State Commission, to which the Government of the Republic of Croatia gave its consent on June 3, 2022, in accordance with the provisions of Article 35 of the Code of Ethics for Civil Servants ("Official Gazette", number: 40 /11. and 13/12.). The code of ethics contains special provisions specific to the employees of the State Commission, respecting the scope, competence, job specifics and significance of the State Commission.

The State Commission's professional staff are: the Secretariat with the Registry, Professional Staff for Decisions on Appeals, and Professional Staff for Monitoring Case Law and Court Procedures.

1.2. The Financial Performance Indicators of the State Commission

Funds for the work of the State Commission are provided from the State Budget, and include funds for salaries, funds for material expenditures and funds for the acquisition of non-financial assets within material costs. The State Commission has no revenues other than budget revenues, and the fee paid for initiating appellate procedures in public procurement (according to the provisions of the PPA 2016) is paid directly into the State Budget and is the revenue of the State Budget.

The total plan for 2021 amounted to HRK 10,722,308.00 from the State Budget. Of this amount, HRK 8,551,236.00 was planned for salaries, HRK 1,972,875.00 for material expenses, HRK 950.00 for financial expenses and HRK 197,247.00 is planned for the acquisition of non-financial assets.

The total execution amounts to HRK 10,643,477.42 or 99.26% of the plan.

HRK 8,551,236.00 was planned for the salaries of employees, and the execution is HRK 8,538,361.85 or 99.85%.

HRK 1,972,875.00 was planned for material costs, and execution is HRK 1,910,172.00 or 96.82%. Of the total execution of material costs, 38.76% refers to rents and leases, where the largest item is the lease of business premises. HRK 197,247.00 was planned for the acquisition of non-financial assets within material costs, of which HRK 194,943.53 or 98.83% was executed, mainly for the procurement of technical equipment, and the adaptation of applications that enable work in procedures in which an e-appeal was filed, and a search of decisions rendered by the State Commission.

In 2021, the amount of HRK 17,292,805.92 was paid into the state budget that was collected from the fees for initiating appellate procedures, which represents an increase compared to 2020 of 8%.

It is clear from the above that, on the basis of the amount of fees paid for initiating appellate procedures, HRK 6,570,497.92 more funds were paid into the State Budget of the Republic of Croatia than the funds planned for the work of the State Commission for 2021.

1.3. Human Resources

The structure and number of employees of the State Commission are regulated by the Internal Structure Decree.

In 2021, a total of 34 people were employed in the State Commission. It follows from the above that the total vacancy rate is 70.83% (34 of the 48 vacancies provided by the Regulation on Internal Organization).

All members of the State Commission are persons with a graduate university degree. Women (77.77%) have a larger share among members.

As of December 31, 2021, a total of 15 civil servants were employed in the Professional Staff for Decisions on Appeals, all of whom have completed their graduate university studies in law and passed the bar exam. A larger share of civil servants assigned to positions in the Professional Staff for Decisions on Appeals is occupied by women - 13 civil servants (86.67%).

As of December 31, 2021, a total of 6 civil servants were employed in the the Professional Staff for Monitoring Case Law and Court Procedures, all of whom have completed a graduate university degree in law and passed the bar exam. A larger share among civil servants assigned to positions in the Professional Staff for Monitoring Case Law and Court Procedures is occupied by women - 4 civil servants (66.67%).

In 2021, work continued in the circumstances caused by the COVID-19 pandemic, which significantly affected the employees of the State Commission in one part of the year. However, by adjusting the organization of work and work processes, and thanks to the selfless commitment of all employees of the State Commission, in 2021 the orderly and timely performance of tasks within the competence and scope of the State Commission continued. Additional evidence of the excellence of the State Commission's human resources is also evident in the fact that, despite a greater number of appeals, the deadline for solving the cases was shortened by 11% in 2021. Also, the lowest number of unresolved cases was transferred to 2022 compared to previous years. Namely, in the cases that were received in December, it is not possible to make a decision in the year in which they were received, simply because it is

not possible to complete the documentation of the case due to the deadlines prescribed by law, and therefore these cases are carried over in the next year. In order to respond in a timely manner to all changes in the public procurement system and to provide answers to disputed questions that arise in practice, the State Commission is aware of the necessity of training and career management of experts who control public procurement procedures, and who must necessarily have the appropriate qualifications, training, skills and experience necessary for their level of responsibility. The State Commission, as a quasi-judicial body and authority in the field of public procurement, is the creator of case law, and by its decisions it significantly influences the conduct of public procurement procedures, not only directly by rendering decisions in specific public procurement procedures, but also indirectly in the way that its decisions are a source of knowledge in the conduct of public procurement procedures on which all participants in the procedures rely. Therefore, the State Commission is committed to continuous and consistent improvement, and the enhancement of the quality of the knowledge of its experts who participate in the decision-making process.

Despite the new situation, the State Commission remained committed to the continuous professional development of its employees. In 2021, until March 2021, the State Commission actively participated in the Lifelong Professional Development Program of the Judicial Academy, and expert advisors - specialists and members of the State Commission attended workshops on administrative law and various skills related to professional work. They also participated in the relevant programs of the State School of Public Administration and the Croatian Insurance Office. Thanks to the efforts of the State Commission and the understanding of the members of the Administrative Council of the Judicial Academy, in December 2021, the employees of the State Commission were again able to participate in the Lifelong Professional Development Program of the Judicial Academy.

In 2021, two expert advisors - specialists successfully graduated from the academic study: "International Master in Public Procurement Management", which took place at the Faculty of Law, University of Belgrade in cooperation with Tor Vergata University in Rome. Including these two advisers - specialists who graduated in 2021, with the support of the State Commission and the provided scholarships of the European Bank for Reconstruction and Development, a total of 6 expert advisers - specialists have graduated from the above study so far.

During 2021, training was also conducted through the exchange of experiences, knowledge and good practice through cooperation with other comparable bodies in the European Union, as well as through cooperation with the European Commission and its expert groups.

Although in 2021, the number of trainings attended by employees of the State Commission was reduced, either because of the lower number of trainings that were held in general, or because of the insufficient financial resources of the State Commission, the State Commission sought to educate its employees through a regular weekly internal exchange of knowledge and experience. The systematic work of the Expert Service for Monitoring Case Law and Court Procedures made a significant contribution to the education, because it acquaints all employees of the State Commission in a timely and comprehensive way, with the legal opinions of the European Court of Justice, the High Administrative Court of the Republic of Croatia (hereinafter: “the High Administrative Court”), the Supreme Court of the Republic of Croatia and the Constitutional Court of the Republic of Croatia.

Since the total value of public procurement is 18.99% of GDP¹, it is clear that public procurement can be one of the factors of economic development if quality and the best value for money can be ensured through it. Therefore, and recognizing the importance of the role of the State Commission in the entire public procurement system, the Government of the Republic of Croatia has, in the National Recovery and Resilience Plan for 2021-2026, foreseen the creation of an analysis of the workload of employees of key institutions in the public procurement system as one of the activities (MINGOR; SAFU, DKOM). Since the State Commission, together with the Ministry of Economy and Sustainable Development and the Central Agency for Financing and Contracting of Programs and Projects of the European Union, is one of the key institutions in the public procurement system, regulating the actions of other participants in public procurement procedures with its decisions, it is necessary to ensure expertise, quality and the sufficiency of human resources. Conducting a workload analysis will provide an objective assessment of the current state of workload as well as proposals for improved business processes, the necessary competences of experts who perform tasks of controlling public procurement procedures, as well as an assessment and recommendations for staff training with the aim of attracting and retaining highly qualified staff, all in order to improved services in the field of public procurement and use of EU funds.

¹ Ministry of Economy and Sustainable Development, Directorate for Trade and Public Procurement Policy, Statistical Report on Public Procurement in the Republic of Croatia, 2021

The structure of members and civil servants in the State Commission as of December 31, 2021:

Job Description	Number of Employees	Decree on Internal Structure of State Commission
President	1	1
Deputy Presidents	2	2
Other Members of the State Commission	6	6
Secretariat	2	5
Subdivision Registry	2	4
Professional Staff for Appellate Procedures	15	22
Professional Staff for Monitoring of Case Law and Court Procedures	6	8
Total:	34	48

The fact that State Commission's employees (members and civil servants) have many years of experience in the institution, amounting to almost 9 years, testifies to the stability of human resources and their high level of expertise, which results in better work organization and greater efficiency.

Of the total number of employees, 94% have a university degree (a Professional Master's Degree).

1.4. The Anti-Corruption Activities of the State Commission

The anti-corruption activities of the State Commission are primarily realized through the prompt performance of tasks within the competence and scope of this state body. Namely, the

review of public procurement procedures, which results in the annulment of decisions and/or procedures that are found to have been conducted contrary to the law, prevents the conclusion of harmful public procurement contracts, and thus, among other things, prevents potential corrupt behaviour. At the same time, it performs a preventive function which prevents the occurrence of unlawful actions and damage.

Recognizing the public's perception that the State Commission is authorized to control all public procurement procedures in which there may be certain illegalities or corrupt practices, especially those that are more exposed in the media, it is important to once again point out the legal powers of the State Commission. Namely, in accordance with the current regulations, the State Commission is authorized to act, i.e., it is competent to control only those public procurement procedures in which a complaint was filed by one of the authorized persons from Article 401 of the PPA 2016, that is, the State Commission is not authorized to initiate appeal procedures and control the legality of procedures and decisions of the contracting authority and other participants in public procurement procedures *ex officio*. When carrying out the appeal procedure, the State Commission acts within the limits of the appeal allegations, and *ex officio* it pays attention to the procedural prerequisites and, in particular, the substantial violations specified in Article 404, paragraph 2 of the PPA 2016. Supervision for the purpose of preventing, eliminating and detecting irregularities that may arise or have arisen as a result of violation of the provisions of the PPA 2016 and its by-laws is carried out by the state administration body responsible for public procurement policy.

In order to be able to effectively act as an anti-corruption element towards the participants in public procurement procedures, the State Commission in its work primarily strives to achieve integrity at the highest level, through its work processes, respecting the principles of independence, transparency, efficiency and predictability. The State Commission achieves a high level of transparency through the assignment of appeal cases, through the manner of determining the factual situation, through reporting on the established factual situation and through the decision-making process, and thus fulfills the assigned status of an independent state body.

An important anti-corruption effect lies in the publicly available case law of State Commission, which are, as well as the decisions of the High Administrative Court in public procurement disputes, published on the website of the State Commission in full, i.e. including the names of the parties. This makes the review procedures predictable and transparent, and represents the

most significant anti-corruption effect of the work of the State Commission. The importance of public publication of decisions without anonymization on the website of the State Commission is reflected in the fact that it has a deterrent effect on participants in public procurement procedures, and in relation to actions and activities within public procurement procedures that could have elements of certain crimes or corruption.

Transparency is an important anti-corruption tool, so the State Commission on its own initiative, made the Register of Appeals Publicly available on the website www.dkom.hr. The register is updated on a daily basis, and provides a general insight into the movement of cases. Thus, the entire procedure of the State Commission is available to the public, from the time required to make a decision, through the composition of the council that made the decision to the content of the decision and the manner in which it was decided. The public can also check the legality of the decisions of the State Commission, given that for each decision that is challenged before the High Administrative Court, the judgment of that court is published.

It should be noted that the State Commission, under given competence, through these activities fully fulfills its anti-corruption role, and in addition to these activities, through education and participation in professional and scientific conferences, warn participants of possible forms of corruption in public procurement and thus raise awareness of their role in preventing corruption in their daily work.

Furthermore, the entire handling of appeals and files takes place with the help of an application that allows the collection of data on appellate procedures and public procurement procedures, as well statistics, in order to establish all the facts. Through this application, all activities that take place in a particular appeal case are monitored, and in this way the transparency of work is ensured and any possibility of non-transparent conduct is prevented. This is also a precondition for the objectivity of the decision-making process, and the ability to monitor the situation and phenomena, both in appellate procedures and in public procurement procedures, which are also the data reported to the Croatian Parliament.

The PPA 2016 prescribes the obligation of the State Commission to act *ex officio* in exhaustively listed cases, to review the lawfulness of procedures and the actions of contracting authorities, with emphasis on the activities of this state body in appellate procedures regardless of the stage of the procedures in which the appeal was filed.

The content of this Report, in the part assessing the situation in public procurement, which includes analyses of the shortcomings in the legal framework, in both public procurement procedures and review procedures, and in the institutional part, allows the legislator to correct the legal framework, which also has an anti-corruption effect.

Also, the State Commission on its own initiative publishes the legal standpoints, adopted at the State Commission session, which standardize the State Commission's actions and practices, thus enabling the general public to control the legality of the State Commission's work.

The State Commission during 2020 and 2021 was an active participant in the development of the Anti-Corruption Strategy for the period from 2021 to 2030. Within the framework of the mentioned Strategy, the State Commission as the stakeholder proposed, within its jurisdiction, activities for the Action Plan from 2022 to 2024.

Recognizing the importance of the fight against corruption, the State Commission, in addition to the aforementioned activities, also participates in the work of the Council for the Prevention of Corruption, which is a working body of the Government of the Republic of Croatia, where consultations between competent bodies are carried out, certain issues from the national anti-corruption policy are discussed, and specific anti-corruption measures are proposed and implemented.

During 2021, the State Commission continued its continuous cooperation and communication with the competent state attorney's offices in order to detect criminal offenses in the field of public procurement. Namely, if the State Commission notices that in a certain public procurement procedure there is suspicion of the commission of a criminal offense, it informs the competent state attorney's office about the same, which then proceeds within the framework of its jurisdiction. The State Commission acts in the same way when it notices that in the public procurement procedure there is a potential violation, which is under the competence of the Croatian Competition Agency.

1.5. The Public Nature of the Work of the State Commission

Transparency and public access to the work of the State Commission is a mission that ensures both objectivity and predictability in its work.

The publicity of its work is ensured by the legal provision according to which the decisions of the State Commission are served by publication and by the internal decision according to which

the Register of Appellate cases is updated on a daily basis, and published on the website of the State Commission, at: www.dkom.hr. In this way, the maximum level of transparency in the work of the State Commission is ensured.

At the same time, the possibility of public insight into the work of the State Commission reduces the need for requests for access to information. In 2021, 3 requests for access to information were received, which is 50.00% less than in the previous year, and all 3 were resolved in 2021.

The official website of the State Commission (www.dkom.hr) contains relevant information related to the review system in public procurement, as well as to the work of the State Commission, and at the same address there are detailed instructions on appellate procedures. By raising the transparency of the work of the State Commission to the highest possible level, through the publication of all relevant data, full access has been provided to information on the work of this state body.

The service of decisions by publication on the website continues to contribute to significant financial savings in the work of the State Commission, especially when it is borne in mind that several parties participate in some procedures, where everyone needs to be served the decision, under equal conditions.

In addition to the decisions of the State Commission, with the entry into force of the PPA 2016, which prescribes the publication of decisions in administrative disputes on the website of the State Commission without anonymization, after the initial standstill in the work of the High Administrative Court, the State Commission publishes judgments of the High Administrative Court rendered in individual appellate cases on the home page of the website in the same way as its own decisions.

In addition to the above, the State Commission publishes on its website the most significant judgments of the Court of Justice of the European Union, as well as the most significant judgments of the High Administrative Court, which significantly influence the practice of the State Commission.

Also, the State Commission publishes significant decisions of the State Commission that affect the application of the PPA 2016 in practice or indicate certain specifics in the application of the PPA 2016. As a further contribution to legal security and predictability of work, the State Commission, also on its own initiative, publishes legal understandings, adopted at the session

of the State Commission, which harmonize the actions and practices of the State Commission. By doing so, the State Commission enabled the general public to control its work in a certain way, taking into account that the legal understanding adopted at the session of the State Commission, is binding on all councils, and for all members of the State Commission.

In addition to performing activities within its competence, the State Commission informs the public through its website about other activities it carries out and also about events in which it participates.

This indicates that the website of the State Commission is an important source of information for participants in public procurement procedures, both in terms of information related to appellate procedures, and in terms of its case law, which guide participants in the conduct of public procurement procedures.

1.6. Other Activities of the State Commission (Bilateral and Multilateral)

In 2021, during which work was still organized in the circumstances of the COVID-19 pandemic, the State Commission participated to a lesser extent in activities outside the State Commission. The necessary meetings took place through online platforms.

However, in 2021 the State Commission continued to work on strengthening cooperation with comparative bodies in other Member States through participation in the expert group of audit bodies in public procurement at EU level, led by the European Commission, DG GROW. During 2021, one expert group meeting was held, also through the online meeting platform. The meeting discussed current topics related to the work and decision-making of audit bodies. At the meeting, a proposal for a regulation of the European Parliament and the Council on foreign subventions that distort the internal market was presented. The functioning of audit bodies within the pandemic, and the impact of the pandemic on the work and efficiency of audit bodies, were also discussed.

During 2021, a delegation of the National Complaints Resolution Council, the first-instance review body in public procurement and the National Office for Central Public Procurement from Romania, spent a five-day study visit at the State Commission. Colleagues from Romania were presented with the system of public procurement in the Republic of Croatia and the system of legal protection in public procurement, where the e-appeal was highlighted as an example of good practice of digitizing the appeal procedure in the European Union. The Electronic Public

Procurement Classifieds of the Republic of Croatia was also presented, and colleagues were introduced to the development of digital public procurement in the Republic of Croatia and the latest results of the Republic of Croatia, which the European Commission published in September 2019 in the Single Market Scoreboard 2019, where the Republic of Croatia in the field of public procurement was marked as "green" for the first time since joining the European Union, i.e. particularly successful taking into account certain indicators within the procurement system. As part of the visit, meetings and workshops were held with representatives of the Ministry of Economy and Sustainable Development and the Central State Office for Central Public Procurement, during which the development of the public procurement system in the Republic of Croatia was discussed, and the best practices of the Central State Office for Central Public Procurement were also presented. As during the meetings and cooperation with other comparative bodies, this time too it was shown that the exchange of knowledge, experience and good practices is an important element of the audit bodies' work for their further professional development.

In April 2020, the State Commission and the Central Agency for Financing and Contracting of EU Programs and Projects, concluded an Agreement on cooperation in the implementation of the twinning project "Strengthening budget planning, execution and internal control functions" (twinning number: MK 18 IPA FI 01 19), and the beneficiaries of the project are the Ministry of Finance, the Public Procurement Administration and the State Public Procurement Appeals Commission of the Republic of Northern Macedonia. Pursuant to this agreement, employees of the State Commission participated in 2021 throughout this project in the capacity of experts who made available their knowledge and experience in performing tasks in the State Commission to the beneficiary - the State Public Procurement Appeals Commission of Northern Macedonia, in order to strengthen the capacity of this appellate body, improve its internal organization, efficiency, transparency and decision-making, as well as make recommendations for improving practice in the most important institutes in the field of public procurement.

In this way, the exchange of experiences and best practices between these two institutions is enabled, and at the same time contributes to strengthening the overall competencies of employees of the State Commission through their participation as project experts who have the opportunity to transfer their knowledge and expertise to colleagues in other countries.

2. STATISTICAL INDICATORS OF THE WORK OF THE STATE COMMISSION

2.1. Pending Cases

In 2021, there was a total of 1,273 pending appellate cases before the State Commission, of which 97 were transferred from 2020, and 1,176 were newly received cases.

2.1.1. The Total Number of Appellate Cases Pending

Type	Number
Cases transferred from 2020*	97
Appeals received in 2021	1176
Total	1273

* Cases transferred from 2020 were not resolved in 2020 mostly because appeals are also received at the very end of the year (112 cases were received in December 2020) and it was impossible to complete the case file documentation in these cases and start to resolve these appeals in 2020.

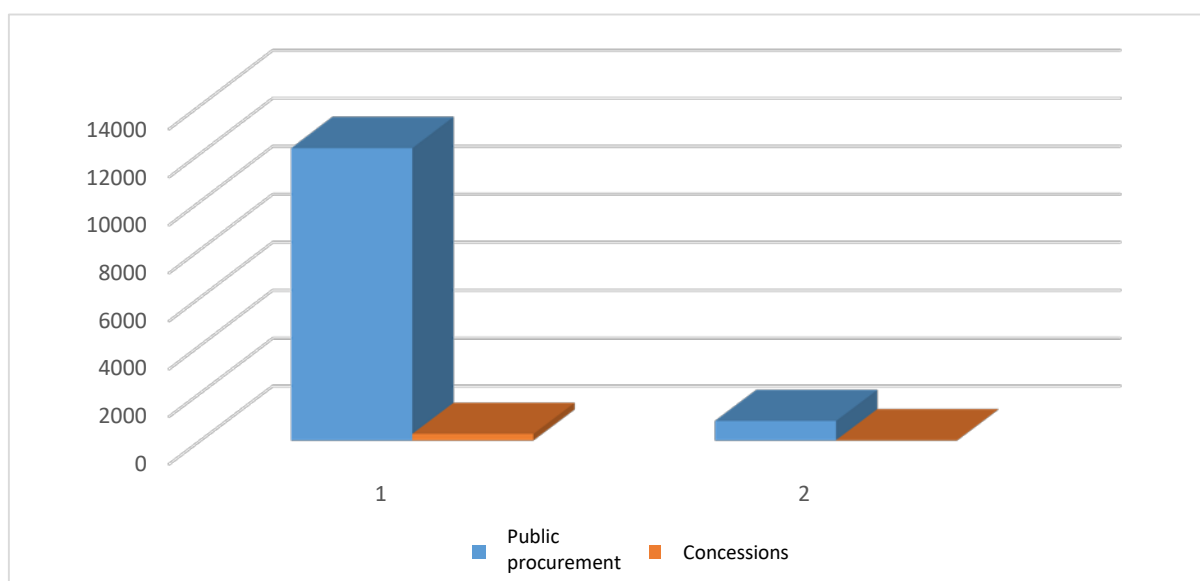
2.1.2. The Number of Appeals Received

Type	Number	%
Public Procurement	1157	98,38
Concessions	19	1,62%
Public-private partnership	0	0
Total	1176	100

In the vast majority of cases appeals are lodged in public procurement procedures, and only 1.62% in concession award procedures, while in procedures for selection of public-private partners no appeal was received in 2021.

2.1.3. Comparison of the Number of Published Procedures and the Number of Procedures in which an Appeal was Lodged

	Number of Procedures Published in 2021 (Classifieds)	Number of Procedures in which an Appeal was Lodged in 2021	%
Public Procurement	12214	825	6.75
Concessions	281	16	5.69



In 2021, the State Commission **reviewed 6.75% of the total number of public procurement procedures**, which represents a slight decrease compared to the previous 2020 (7.23%). It should be noted here that in 2021 there was an increase in the total number of public procurement procedures published in the Electronic Public Procurement Classifieds (EPPC) by 8,16% compared to the number of procedures published in 2020, which can be one of the indicators of the recovery of economic activities after the COVID-19 pandemic.

In 2021, the State Commission controlled 5.69% of the total number of concession procedures, which represents a slight decrease compared to the previous 2020 (6.67%).

2.1.4. Comparison of the Number of Cases Received in the period 2014-2021

During 2021, the State Commission received 1176 appeals. In relation to the total number of cases pending before this state body (1273), the average number of appeals pending on a monthly basis was 106 cases.

Year	Appeals received	Comparison with the Previous Year	
2014	1315	-	-
2015	1137	15/14	-13.54 %
2016	1135	16/15	-0.18 %
2017	945	17/16	-16.74 %
2018	1170	18/17	+23.80%
2019	1209	19/18	+3.33%
2020	1089	20/19	-9.92%
2021	1176	21/20	+7.99%

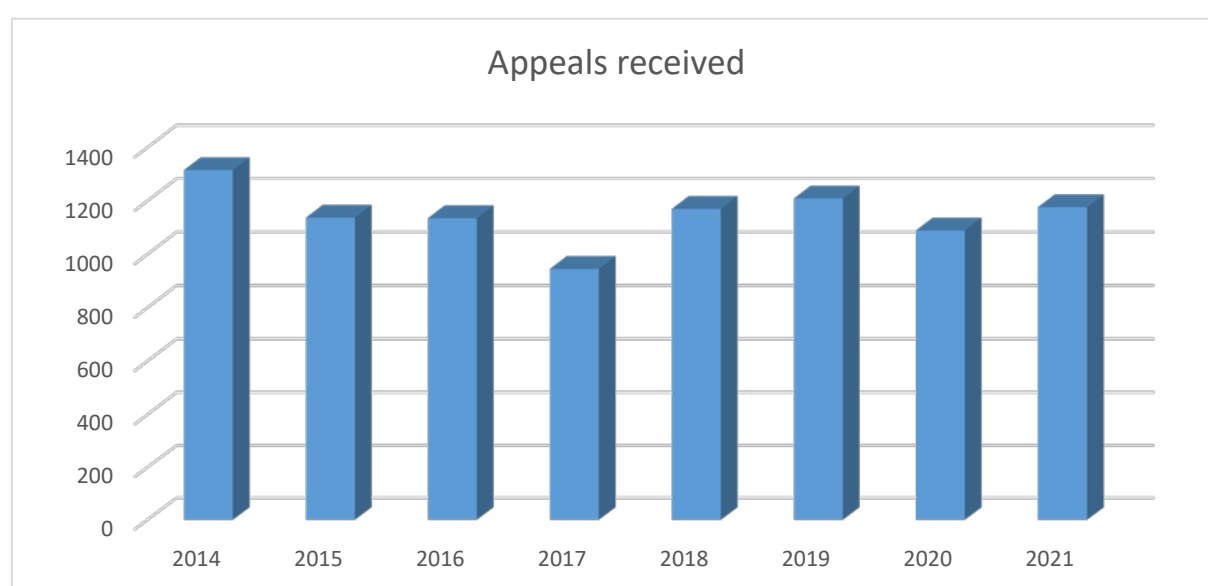
Although in the period from 2014-2017 a decrease in the number of appeals was recorded, at the same time there was a continuous increase in the complexity of appellate cases related to the possibility of using EU funds, but also the increasing involvement of practicing attorneys specialized in public procurement, and the participation of consultants.

However, in 2018 the number of appellate cases increased again by 23.80% compared to the previous year, which can be attributed to the logical consequence of the application of the PPA 2016. Namely, the PPA 2016 entered into force on 1 January 2017, which means that it was only in 2018, after the case law became established and a certain degree of legal certainty was

achieved, and after the *ex-officio* review of the procedures was made possible, that a larger number of received appeals was recorded. A larger inflow of appeals continued in 2019.

In 2020, the number of received appeal cases decreased by 9.92%. However, it should be noted the previously presented data on the total decrease in the number of public procurement procedures published in the EPPC, and in what context there was an increase in the share of public procurement procedures that were subject to control before the State Commission.

In 2021, the number of received appeal cases increased again by 7.99%, which may indicate a stronger resumption of economic activities after the pandemic.

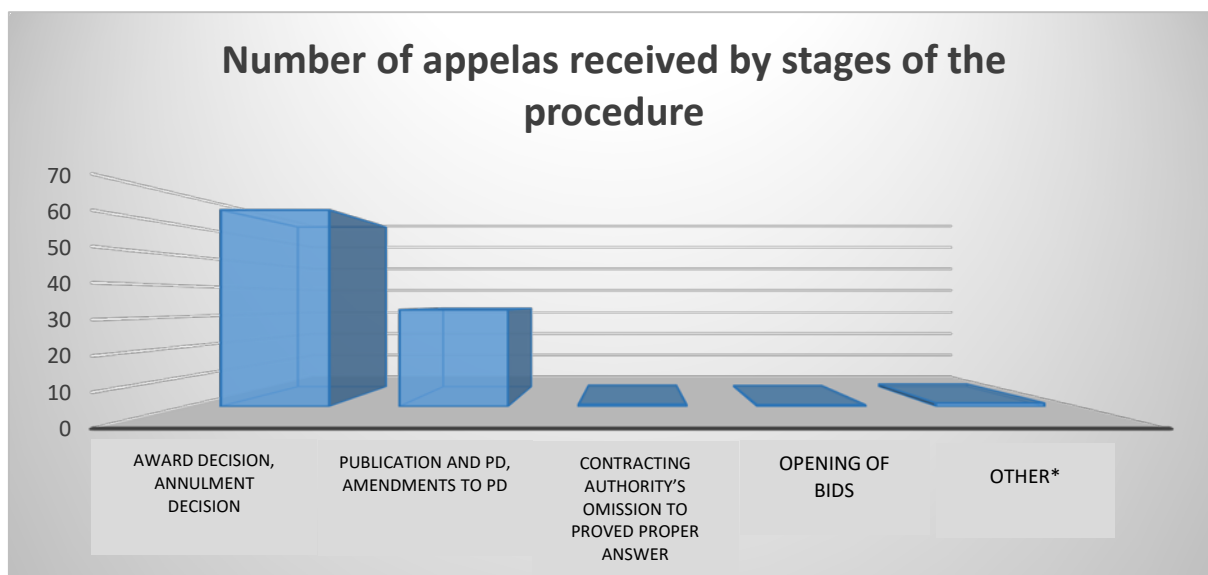


2.2. The Number of Appeals Received by Stages of the Procedures

No.	Stage	Public Procurement	Concessions	PPP	Total	%
1.	Award decision; Annulment decision	756	13	-	769	65.39
2.	Publication and procurement documentation (PD), amendments to procurement documentation (PD)	372	5	-	377	32.06

3.	Failure of contracting authority to provide proper answer	9	0	-	9	0.77
4.	Opening of tender applications	6	1	-	7	0.59
5.	Other*	14	0	-	14	1.19
6.	Total	1157	19	-	1176	100

* Appeals in relation to other actions, decisions, procedures and omissions by contracting authorities



In 2021, out of the total number of received appeals, 32.06% of appeals were reported on the procurement documentation, which is a slight increase compared to 2020 (30.49%). However, there are still a large number of appeals against procurement documents, largely due to the single fee for initiating appeal proceedings in the amount of HRK 5,000.00, regardless of the estimated value of the procurement.

Review of public procurement procedures in the early phase of published documentation or amendments to the procurement documentation significantly affects the quality of implementation of public procurement procedures and indirectly leads to avoidance of certain irregularities that result in financial corrections in procedures financed from EU funds.

2.3. The Number of Unresolved Cases

Cases Received in 2021	Resolved Cases	Unresolved Cases
1176*	1110	66*
100%	94.38%	5.61%

*In 2021, there were a total of 1273 cases pending, since 97 cases were transferred from 2020.

*On 31 December 2021, 66 cases had not been resolved, mostly received at the end of the year (94 appeals in December), whose resolution continued in 2022 within the time limits set by law.

In 2021, the number of appeal cases whose resolution was transferred to 2022 decreased by 31.96% compared to 2020, when the resolution of 97 appeal cases was transferred to the following year. Namely, in the part of cases received, mostly in December, it is not possible to make a decision in the year in which they were received, since the file documentation is not complete, due to the deadlines prescribed by law for the delivery of documentation and statements of the parties, and therefore their resolution is postponed to the next year. The above data indicates an extremely high degree of up-to-dateness of the State Commission's work, especially considering the increase in the total number of appeal cases received (by 7.99% compared to 2020) while the complexity of which has not decreased. Also, the positive impact of the e-appeal is not negligible here, considering that the submissions are delivered through the e-Appeal system and the delivery is made on the same day, thus shortening the time of exchanging submissions and completing the documentation of the appeal case

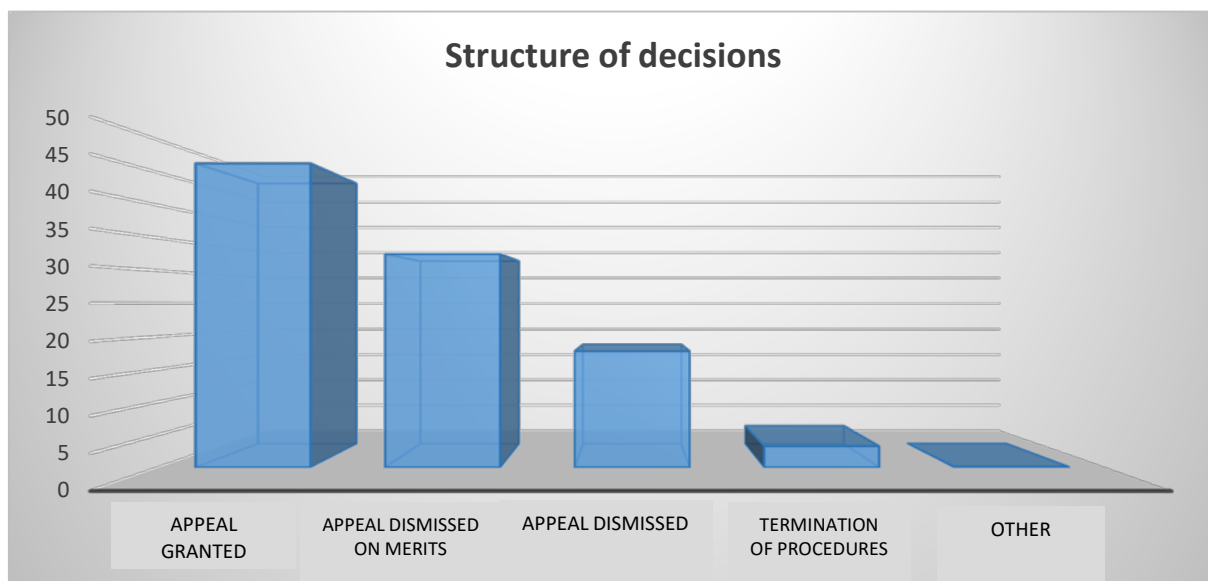
2.4. The Structure of Decisions in Appellate Cases

The total number of cases pending in 2021 (1273) consists of cases transferred from 2020 (97), and those received in 2021 (1176).

For the purposes of this report, the cases received and resolved in 2021 are analyzed, 1110 of them, i.e. the data on cases transferred to 2022 are not presented (66).

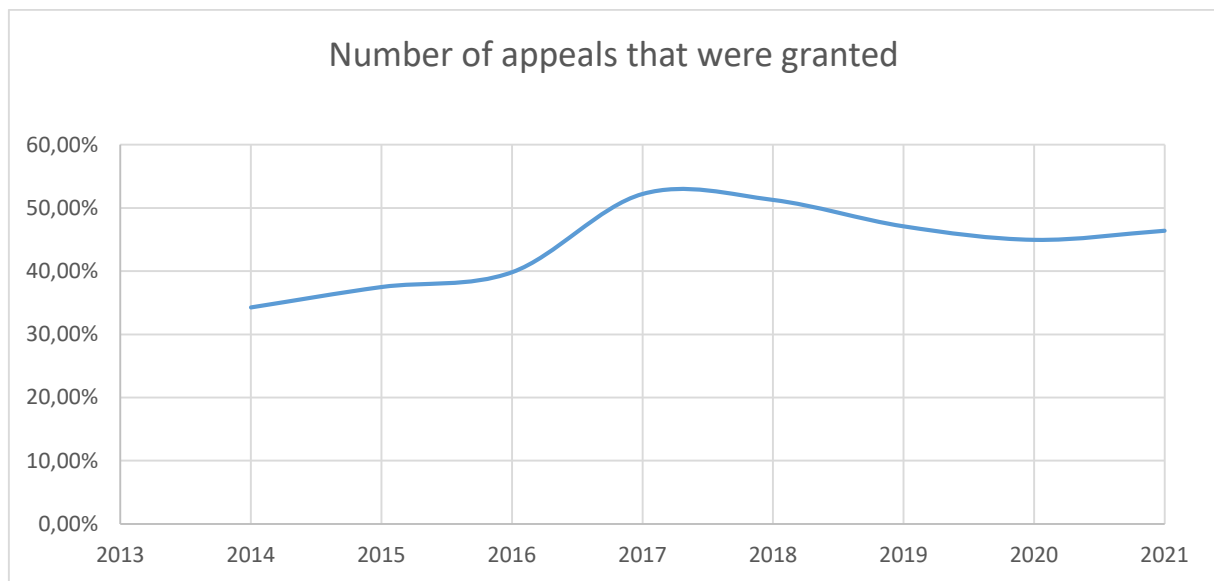
Type of Decision	Number	%
Appeal granted	515	46.40
Appeal dismissed on merits	361	32.52

Appeal dismissed	197	17.75
Termination of procedures	36	3.24
Other	1	0.09
TOTAL	1110	100



The trend of a high percentage of granted appeals (46.40%) has continued in comparison to 2020 (44.96%), which to a different extent results in the annulment of the contracting authority's decisions, procedures or actions.

In the observed period, there was a fairly high percentage of appellate cases in which the appeal was dismissed – a total of 17.75%. The stated percentage represents a slight increase compared to 2020, when the appeal was rejected in 16.63% of cases.



2.5. The Structure of Annulments (Decisions, Procedures and Actions of Contracting Authorities Affected by Unlawfulness)

Subject of Annulment	Number	%
Procurement documentation	132	25.63
Award decision	334	64.85
Annulment decision	43	8.35
Procedure	6	1.17
TOTAL	515	100



In 2021, the largest number of appellate cases in which the appeal was granted were related to the annulment of the award decision (64.85%). However, here it should be taken into account that the largest number of submitted appeals, 65.39% of them, were filed against the award decision, i.e. the decision on annulment

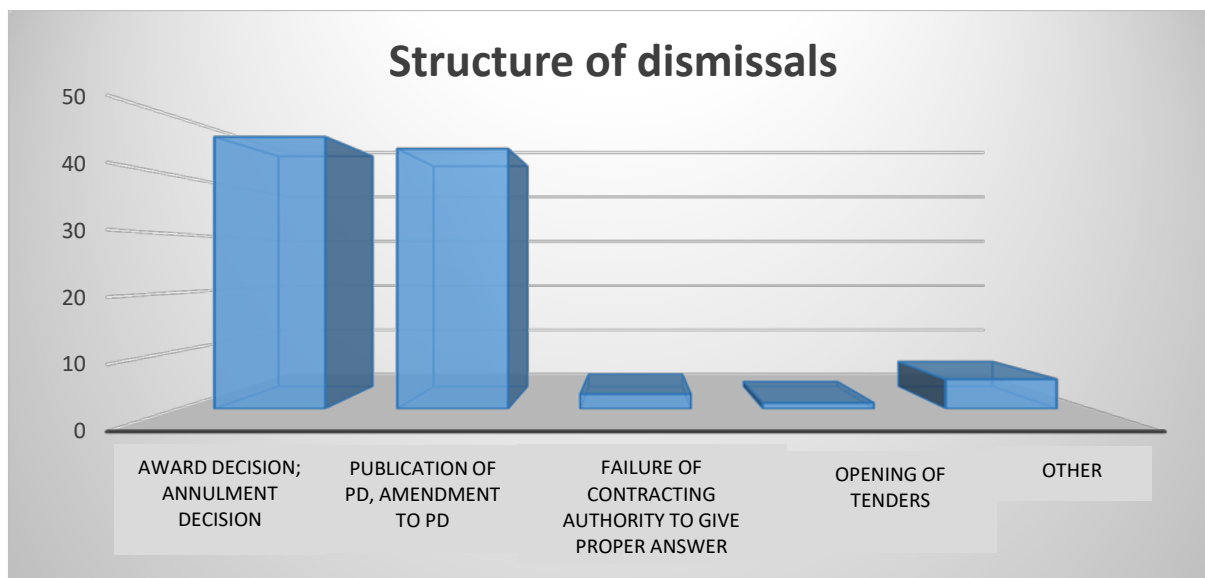
In 2021, only six filed appeals resulted in the annulment of the entire public procurement procedure, which is a significant decrease compared to 2019 (when there were 21 annulled procedures). That also resulted in a reduction of the need to reopen public procurement procedures after the decision by the State Commission. Also, this indicates a decrease in the number of substantial violations, which result in the annulment of the public procurement procedures. The decrease in the number of annulled public procurement procedures is causally related to the number of appeals granted in the procurement documentation phase, since substantial violations of the public procurement procedures, which were sanctioned and eliminated at that stage of procedures, cannot result in annulment of the public procurement procedures in the stage of appeal against the award decision. This also indicates an increasing level of expertise in the fourth year of application of the PPA 2016.

2.6. The Structure of Dismissals

In 2021, a total of 197 decisions were issued dismissing the appeal, which represents 17.75% of the total cases resolved. This percentage represents increase compared to 2020 when the appeal was dismissed in 16.63% of cases. Of the total number of appeals dismissed in 2021, the largest number refers to appeals lodged in the procurement documentation phase (44.67%) and regarding award decision (46.70%).

Stage	Number	%
Award decision; Annulment decision	92	46.70
Publication of procurement documentation, Amendment to procurement documentation	88	44.67
Failure of contracting authority to give proper answer	5	2.54
Opening of tenders	2	1.02
Other*	10	5.08
TOTAL	197	100

* Appeals against other actions, decisions, proceedings and omissions of contracting authorities.



When the data on dismissed appeals are analyzed in relation to the stages of the procurement procedures, it can be noticed that there is an equal share of dismissed appeals in the phase of appeal against procurement documentation (basic documentation and changes) and in the phase of appeal against the award decision / annulment.

Compared to 2020, when 72 appeals filed against procurement documentation were dismissed, in 2021 such appeals were dismissed in 88 cases, which represents an equal number of

dismissed appeals filed on procurement documentation if the increase in the number of appeals received in 2021 compared to 2020 is taken into account.

2.7. The Structure of Decisions in the Stages of Publication, Procurement Documentation and Modifications of Procurement Documentation

In 2021, 377 appeals were received related to the phase of publication and of amendment of procurement documentation. Of these, 358 were resolved in 2021. In the largest number of cases, the appeal was granted (37.71%).

Type of Decisions in Stages of Publication, Procurement Documentation and Amendments to Procurement Documentation	Number	%
Appeal granted	135	37.71
Appeal dismissed on merits	122	34.08
Appeal dismissed	88	24.58
Termination of procedures	13	3.63
TOTAL	358	100

Appeals lodged at the stages of publication, procurement documentation and amendments to procurement documentation prevent the continuation of the public procurement procedures. Given the large number of dismissals and terminations in this phase in previous years, as well as the large number of complaints reported immediately before the opening of bids, the State Commission in its Work Reports for 2019 and 2020 indicated that there is possibility that certain economic operators do not file appeals against the tender documentation with the aim to seek the legal protection against the illegal actions of the contracting authority, but they are taking advantage of the possibility for stopping the procurement process by filing an appeal in order to delay the process or to put pressure on the contracting authority . The State Commission assessed that such situations can lead to circumstances in which corruption risks are intensified

and pointed to the need for legal changes to enable the contracting authorities not to stop the procurement process, i.e. not to postpone the public opening of bids in the event that the complaint filed is clearly untimely. It was considered that in this way it would be prevented, to some extent, the use of the instrument of appeal in the abusive manner. The competent ministry recognized the importance of the aforementioned recommendations and, accordingly, drafted proposal of the Law on Amendments to the PPA 2016 which was submitted for public consultation, and which contained legal changes in that direction.

2.8. Analysis of Ex Officio Conduct - Application of the PPA 2016

Pursuant to the PPA 2016, the State Commission pays attention *ex officio* to the procedural requirements and substantial violations of the public procurement procedures, which are listed exhaustively in Article 404, paragraph 2 of the PPA 2016.

In 2021, the State Commission, acting *ex officio*, found the existence of substantial violations referred to in Article 404, paragraph 2 of the PPA 2016 in 13 decisions.

2.8.1. The Number of Decisions Finding a Substantial Violation with regard to the Subject of the Appeal (Stages)

Subject of Appeal	2019	2020.	2021.
Procurement documentation	21	2	3
Amendment to procurement documentation	1	2	0
Award / annulment decision	53	13	10
Opening and omission	1	0	0
Other	0	0	0
TOTAL	76	17	13

The comparison between the number of decisions in which a substantial violation of public procurement procedures was found in 2021 (13 decisions) and the number of decisions in which a substantial violation of public procurement procedures was found in 2019 (76 decisions) and 2020 (17 decisions), shows that the total number of decisions in which a substantial violation

was found in 2019 is significantly reduced. This is an indicator of increasing the expertise and level of knowledge of participants in public procurement procedures.

2.8.2. The Number and Structure of Substantial Violations Found

The State Commission, acting *ex officio*, found substantial violations, as referred to in Article 404, paragraph 2 of the PPA 2016, in 13 decisions, whereby certain violations were found in several decisions.

Substantial Violation	2019	2020.	2021.
Short time limit for submission of tender applications	3	3	0
Correction of notice was not published	0	0	0
Time limit for submission of tender applications was not extended	2	1	0
Award criterion	0	0	0
Mandatory grounds for disqualification	44	10	4
Negotiations and amendment of tender	0	0	1
Criterion for award to economic entity	36	5	8
TOTAL	85	19	13

A comparison of the statistical data presented on the number of substantial violations, and statistics on the number of substantial violations found in previous years, shows a continuous trend of decreasing the total number of violations.

2.9. Annulment of Public Procurement Contracts or Framework Agreements

In 2021, the State Commission did not render any decision on annulment of the public procurement contract or framework agreement. No appeal was lodged against the amendment of the public procurement contract.

2.10. Decisions on Proposals for Issuing An Interim Measure

In 2021, 48 proposals for issuing an interim measure were received, with an average decision-making time of two days, which is a reduction in the average decision-making time by one day or 33.33% compared to 2019, while in 2020 the decision time was also two days.

Proposals for Issuing Interim Measures		Number
Number of proposals decided in 2021, of which there were:		48
	Dismissed on merits	4
	Dismissed	16
	Proposals granted	16
Other (resolved in another way) *		12
TOTAL NUMBER OF PROPOSALS RECEIVED		48

* In certain appellate procedures decisions on the merits of the appeal were made, and so no separate decisions on accessory claims were made.

In 2021, 48 proposals to issue interim measures were submitted, or 12% more than in 2020.

In 2021, 16 proposals to issue interim measures were dismissed, and 4 were dismissed on merits. Proposals were granted in 16 appellate cases.

2.11. Decisions on Requests for Approval of the Continuation of Procedures and/or Conclusion of a Public Procurement Contract

In 2021, 17 requests were received for the continuation of procedures and/or conclusion of a public procurement contract, or a framework agreement, which were resolved in an average time of one day, which is a reduction of the average decision-making time compared to 2020 by one day or 50%, which at the same time represents the maximum shortening of the decision-making time.

Request to Grant Continuation of the Proceedings and/or Conclusion of a Public Procurement Contract		Number
The number of applications decided in 2021, of which were:		17
	Dismissed on merits	8
	Dismissed	-
	Granted requests	2
Other (resolved in some other way) *		7
TOTAL NUMBER OF APPLICATIONS RECEIVED		17

* In certain appellate procedures no decisions on the merits of the appeal were made, and so no separate decisions on accessory claims were made.

In 2021, 17 requests for approval of the continuation of the public procurement procedure were submitted, or 41% less requests compared to 2020.

Requests were dismissed on merits in 8 appellate cases and granted in 2.

2.12. Fines

Pursuant to Article 429 of the PPA 2016, the State Commission may, in cases prescribed by law, impose a fine on the contracting authority. In 2021, no fine was imposed pursuant to the provisions of that Article of the Act, since the requirements for the imposition of a fine, as prescribed by the law, were not met.

2.13. Oral Hearings

Pursuant to Article 427 of the PPA 2016, the parties to the appellate proceedings may propose the holding of an oral hearing before the State Commission, in order to clarify complex facts of the case or legal issues. In 2021, a request for an oral hearing was made in ten (11) appellate cases. None was granted and no oral hearing was held.

Holding an oral hearing would, in principle, prolong the review procedures, where the procedures conducted by the State Commission are subject to a time limit. By their legal nature, proceedings before the State Commission consist of a review of the lawfulness of documentation, which, given the explicit obligation to ensure the burden of proof, the party is obliged to provide. Given that the presentation of new facts and allegations of the appellant is limited by the legal deadlines for lodging an appeal, only in exceptional situations could an oral hearing clarify certain factual issues. For this reason, the holding of an oral hearing is replaced by a written communication with the parties, requesting the completion of the documentation. Regardless of the above, an oral hearing, as an important element of adversarial procedures, is a procedural tool which the State commission intends to develop in a targeted manner, in specific appellate procedures in the coming period.

In this sense, and in order to enable a quick and efficient convening and holding of an oral hearing, in cases where it proves expedient and necessary, as one of the proposals to amend the current Public Procurement Act, the State Commission proposed setting a shorter deadline for the delivery of the invitation to the hearing (5 days before the oral hearing), which proposal was accepted and included in the Draft Proposal of the Law on Amendments to the Public Procurement Act, which is currently in the process of adoption.

2.14. The Length of Appellate Procedures

The length of the review proceedings is prescribed by Article 432, paragraph 2 of the PPA 2016, according to which the State Commission is obliged to render a decision within 30 days of the submission of an orderly appeal, and prepare and submit a written copy of the decision within eight days from the date of rendering the decision at a session of the panel.

Pursuant to the State Commission Act, the obligatory content of the Work Report is data on the average duration of the appeal procedure from the day of receipt of the appeal to the day of the decision, as well as from the date of completion of the documentation of the appellate case until the rendering of the decision. The first data speak of the time period the file spends at the State Commission, and the second of the active time required to render a decision on the main matter, since no decision on merits can be made in appeal procedure before the file is completed. Although this Act does not prescribe the obligation to disclose data on the average length of appellate procedures from the date the appeal is deemed orderly to the date of the decision, the

PPA 2016 prescribes the obligation to render a decision within 30 days from the date the appeal is deemed orderly, which is why this information is given in this Report.

Length of Appellate Procedures	2019	2020.	2021.
Average time from the date of completion of appellate cases to the rendering of a decision, in days	16	13	12
Average time from receipt of the appeal to the rendering of the decision, in days	34	30	27
Average time from the date the appeal is deemed orderly to the rendering of the decision, in days	27	26	23

In 2021, the trend of shortening the decision-making period of the State Commission was maintained.

The time from the completion of the appeal case to the decision was 12 days, which represents an additional shortening of the decision-making time compared to 2020, when it was 13 days. At the same time, the average time from receiving the appeal to rendering a decision was shortened from 30 to 27 days. while the average time from lodging an appeal that was deemed orderly appeal to rendering a decision was reduced from 26 to 23 days.

The above results indicate the exceptional excellence of the State Commission's human resources, especially considering the growth in the number of appeal cases in 2021 without reducing the quality of the decisions made, which is evident from the data on the significant reduction in the number of decisions of the State Commission that were annulled by the High Administrative Court.

In the Work Report for 2020, the State Commission pointed out the length of appeal procedures in which appeals were filed without appeal allegations (description of irregularities and explanation) and the need to intervene in the existing legislative framework was pointed out in order to prevent such behavior. The competent ministry accepted the aforementioned proposal and included it in the Draft Proposal of the Law on Amendments to the Public Procurement Act.

2.15. The List of Contracting Authorities with five or More Appellate Procedures

The following table shows the number of appellate cases in relation to the contracting authorities that had 5 or more appellate procedures before the State Commission in 2021. The table also shows the number, that is, the percentage of appeals granted in relation to the number of appeals received, as well as the total number of conducted procedures by contracting authorities in 2021.

No.	Contracting Authority	Total Number of Public Procurement Procedures published in EPPC 2021.	Number of Public Procurement Procedures in which an Appeal was Lodged	Number of Reviewed v. Number of Published Procedures	Appeals Received	Appeals Granted	Appeals Granted v. Appeals Received
1.	HP-Hrvatska pošta d.d., Jurišićeva 13, 87311810356, Zagreb	130	10	7,69%	11	8	72,73%
2.	Hrvatski operator prijenosnog sustava d.o.o., Kupska 4, 13148821633, Zagreb	201	26	12,93%	39	19	48,72%
3.	Grad Zagreb, Trg Stjepana Radića 1, 61817894937, Zagreb	649	38	5,85%	48	29	60,42%
4.	Brodsko-posavska županija, Petra Krešimira IV br. 1, 27400987949, Slavonski Brod	10	2	20,00%	5	5	100,00%

5.	Hrvatske autoceste d.o.o., Širolina 4, 57500462912, Zagreb	310	28	9,03%	50	23	46,00%
6.	Agencija za obalni linijski pomorski promet, Antofagaste 6, 27735395987, Split	7	5	71,43%	10	1	10,00%
7.	Hrvatski zavod za zapošljavanje, Radnička cesta 1, 91547293790, Zagreb	57	8	14,03%	19	10	52,63%
8.	Grad Pula-Pola, Forum 1, 79517841355, Pula-Pola	30	6	20,00%	7	4	57,14%
9.	Grad Split, Obala kneza Branimira 17, 78755598868, Split	58	6	10,34%	7	4	57,14%
10.	Grad Vukovar, Dr. Franje Tuđmana 1, 50041264710, Vukovar	25	4	16,00%	7	2	28,57%
11.	Hrvatske šume d.o.o., Ulica kneza Branimira 1, 69693144506, Zagreb	134	11	8,21%	22	14	63,64%

12.	Ministarstvo rada, mirovinskog sustava, obitelji i socijalne politike, Ulica grada Vukovara 78, 53969486500, Zagreb	33	4	12,12%	5	3	60,00%
13.	Vodovod i kanalizacija d.o.o., Hercegovačka 8, 56826138353, Split	37	6	16,22%	9	4	44,44%
14.	Šibensko-kninska županija, Trg Pavla Šubića I br. 2, 99395814920, Šibenik	6	3	50,00%	5	1	20,00%
15.	Klinički bolnički centar Sestre milosrdnice, Vinogradska 29, 84924656517, Zagreb	55	5	9,09%	10	6	60,00%
16.	Hrvatska elektroprivreda d.d., Ulica grada Vukovara 37, 28921978587, Zagreb	69	14	20,29%	26	8	30,77%
17.	HEP-Operator distribucijskog sustava d.o.o., Ulica grada Vukovara 37, 46830600751, Zagreb	316	34	10,76%	41	19	46,34%

17.	HEP-Proizvodnja d.o.o., Ul. grada Vukovara 37, 09518585079, Zagreb	151	14	9,27%	19	5	26,32%
18.	KD Vodovod i kanalizacija d.o.o., Dolac 14, 80805858278, Rijeka	43	5	11,63%	9	2	22,22%
19.	Hrvatske ceste d.o.o., Vončinina 3, 55545787885, Zagreb	201	35	17,41%	42	20	47,62%
20.	Splitsko- dalmatinska županija, Domovinskog rata 2, 40781519492, Split	31	3	9,68%	10	4	40,00%
21.	Klinički bolnički centar Zagreb, Kišpatićeva 12, 46377257342, Zagreb	219	15	6,85%	20	13	65,00%
22.	Hrvatske vode, Ulica grada Vukovara 220, 28921383001, Zagreb	143	16	11,19%	27	14	51,85%
23.	Hrvatska radiotelevizija, Prisavlje 3, 68419124305, Zagreb	109	9	8,26%	12	9	75,00%

24.	Opća bolnica Zabok i Bolnica hrvatskih veterana, Bračak 8, 34938158599, Zabok	12	3	25,00%	6	2	33,33%
25.	Gradski prijevoz putnika d.o.o., Cara Hadrijana 1, 96779488329, Osijek	3	3	100,00%	5	1	20,00%
26.	Klinički bolnički centar Osijek, J.Huttlera 4, 89819375646, Osijek	91	4	4,39%	6	2	33,33%
27.	Komunalno poduzeće d.o.o., Ulica Drage Grdinića 7, 87214344239, Križevci	7	3	42,86%	6	1	16,67%
28.	Jadrolinija, Riva 16, 38453148181, Rijeka	100	5	5,00%	13	12	92,31%
29.	Državna geodetska uprava, Gruška 20, 84891127540, Zagreb	30	9	30,00%	16	4	25,00%
30.	Fond za zaštitu okoliša i energetsku učinkovitost, Radnička 80, 85828625994, Zagreb	26	6	23,08%	7	5	71,43%

31.	HŽ-Infrastruktura d.o.o., Mihanovićeve 12, 39901919995, Zagreb	99	11	11,11%	24	13	54,17%
32.	Ministarstvo poljoprivrede, Ulica grada Vukovara 78, 76767369197, Zagreb	41	4	9,76%	7	6	85,71%
33.	Klinički bolnički centar Split, Spinčićeva 1 , 51401063283, Split	147	4	2,72%	5	3	60,00%
34.	Zagrebačka županija, Ulica grada Vukovara 72/IV, 07132269553, Zagreb	27	1	3,70%	7	4	57,14%
35.	Klinički bolnički centar Rijeka, Krešimirova 42, 40237608715, Rijeka	167	8	4,79%	8	6	75,00%
36.	Đakovački vodovod d.o.o., Bana Josipa Jelačića 65, 04829242916, Đakovo	9	4	44,44%	6	2	33,33%
37.	Grad Sisak, Rimska 26, 08686015790, Sisak	26	5	19,23%	7	6	85,71%

38.	Ministarstvo unutarnjih poslova, Ul. grada Vukovara 33, 36162371878, Zagreb	159	6	3,77%	8	2	25,00%
39.	Plinacro d.o.o., Savska cesta 88, 69401829750, Zagreb	81	5	6,17%	5	2	40,00%
40.	Opća bolnica Varaždin, Ivana Meštrovića 1, 59638828302, Varaždin	58	4	6,90%	5	1	20,00%
41.	Središnji državni ured za središnju javnu nabavu, Ulica Ivana Lučića 8/II, 17683204722, Zagreb	13	3	23,08%	9	1	11,11%
42.	Ministarstvo mora, prometa i infrastrukture, Prisavlje 14, 22874515170, Zagreb	23	5	21,74%	8	1	12,50%
43.	Ministarstvo zdravstva, Ksaver 200a, 88362248492, Zagreb	23	3	13,04%	7	5	71,43%
44.	Istarska županija, Dršćevka 3, 90017522601, Pazin	21	4	19,05%	7	3	42,86%

45.	Primorsko-goranska županija, Adamićeva 10, 32420472134, Rijeka	24	3	12,50%	5	3	60,00%
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The number of appeals refers to public procurement procedures and concession award procedures, while the number of publications in the EPPC of the Republic of Croatia for 2021 refers only to public procurement.

The party to whose detriment the appellate proceedings has ended is obliged to reimburse the opposing party for the justified costs incurred by it in participating in the appellate proceedings (Article 431, paragraph 3 of the PPC 2016). This specifically means that in the case of acceptance of the appeal request, the Contracting authority is obliged to reimburse the appellant for eligible costs, as a rule, the cost of the fee for initiating the appeal procedure and the cost of legal representation.

Below is an overview of the Contracting authorities that paid the highest amount of costs of the appeal procedure in 2021. It is important to keep in mind here that these are the Contracting authorities that, as a rule, carry out the most public procurement procedures, so the risk of unintentional irregularities is higher. Also, since these are mostly large-value procurements, the fees for initiating an appeal procedure, i.e. the fees for the costs of an appeal procedure, are higher. In some public procurement procedures, Contracting authorities often have several appeals from different economic operators, so the costs of the appeal procedure, in the case of acceptance of the appeal, are multiplied.

No.	Contracting Authority	Total number of proceedings	Total value of proceedings	Total value of the proceedings that were reviewed	Total amount of costs paid
1.	Hrvatske autoceste d.o.o., Zagreb	310	3.060.217.624,00	1.364.439.803,75	552.031,23

2.	Hrvatske ceste d.o.o. Zagreb	201	3.464.521.100,00	749.949.750,00	550.250,01
3.	Hrvatske vode, Zagreb	143	1.032.750.161,86	152.183.811,00	463.812,50
4.	Grad Zagreb	649	6.332.434.169,50	910.641.580,71	450.250,00
5.	Hrvatski operator prijenosnog sustava d.o.o., Zagreb	201	1.766.866.687,28	373.210.228,97	422.342,75

2.16. Appellants with 6 or More Appellate Procedures

In this statistical period, appellants and their success in appellate procedures were monitored. This type of data contributes to obtaining a broader picture of appellate procedures before the State Commission.

Number	Appellant	Number of Appeals Lodged in 2021	Appeal Granted	Appeal Dismissed on Merits	Appeal Dismissed	Termination
1.	Elektrocentar Petek d.o.o., Etanska cesta 8, , 17491977848, Ivanić-Grad	13	5	7	1	0
2.	Printshop d.o.o., Grgura Budislavića 135, 53605605523, Zadar	6	4	2	0	0
3.	Birodom d.o.o., Hojnikova 19, 47794513055, Zagreb	7	5	2	0	0
4.	Ingpro d.o.o., Žitnjačka cesta 23A, 93205229945, Zagreb	6	6	0	0	0

5.	Trames d.o.o., Šipčine 2, 80480322314, Dubrovnik	17	10	4	3	0
6.	Veritas Esco d.o.o., Mejaši 2A, 13010985803, Split	7	4	3	0	0
7.	Mipek d.o.o., Industrijska cesta 14, 07285361673, Križ	8	2	4	2	0
8.	Tehno-Elektro d.o.o., Augusta Cesarca 3, 11657560751, Đakovo	11	5	4	2	0
9.	Sigurnost d.o.o., Gundulićeva ulica 5, 77306500476, Osijek	5	2	3	0	0
10.	Strabag d.o.o., Petra Hektorovića 2/VII, 74971361430, Zagreb	6	3	1	2	0
11.	Narodne novine d.d., Savski gaj XIII. put broj 6, 64546066176, Zagreb	10	5	3	1	1
12.	SGM Informatika d.o.o., Grge Novaka 22A, 09168707993, Split	11	7	3	0	1
13.	Medical Intertrade d.o.o., Dr. Franje Tuđmana 3, 04492664153, Sveta Nedelja	14	10	4	0	0
14.	Dalekovod d.d., Marijana Čavića 4, 47911242222, Zagreb	11	5	3	1	1

15.	Građevinski laboratorij d.o.o., Lovranska 8, 79462283630, Osijek	6	2	2	2	0
16.	Siemens Healthcare d.o.o., Heinzelova 70/A, 97824531898, Zagreb	7	4	2	1	0
17.	A1 Hrvatska d.o.o., Vrtini put 1, 29524210204, Zagreb	7	3	3	0	1
18.	Medika d.d., Capraška 1, 94818858923, Zagreb	7	5	2	0	0
19.	Ramić-Trade d.o.o., Put starog sela 11, 39960448656, Podstrana	15	12	2	1	0
20.	Slavonija bus d.o.o., Novi Grad 26a (Općina Oprisavci), 84931084664, Novi Grad	12	6	4	2	0
21.	Sanac d.o.o., Dugoselska ulica 1D, 99410889025, Rugvica	7	4	3	0	0
22.	Securitas Hrvatska d.o.o., Oreškovićeve 6n/2, 33679708526, Zagreb	6	5	0	0	1
23.	Almes d.o.o., Blažići 20a, 39322256656, Viškovo	6	3	3	0	0
24.	Siemens d.d., Heinzelova 70a, 12673471493, Zagreb	7	2	3	2	0
25.	Institut IGH d.d., Janka Rakuše 1, 79766124714, Zagreb	13	10	2	1	0

26.	Mobilita Evolva d.o.o., Froudova 5, 49776278191, Zagreb	13	10	3	0	0
27.	Insepo d.o.o., Karamanov prilaz 2, 92528715879, Zagreb	7	4	3	0	0
28.	Algebra d.o.o., Maksimirska 58A, 24919984448, Zagreb	6	3	1	2	0
29.	Cadcom d.o.o., 11. Trokut 5, 10073644499, Zagreb	7	1	1	3	2
30.	Medius d.o.o., Đenović bb, Herceg Novi, Crna Gora	6	2	2	2	0
31.	Ekonerg d.o.o., Koranska ulica 5, 71690188016, Zagreb	6	5	0	0	1
32.	Geoprojekt d.d., Sukoišanska 43, 25623466485, Split	9	5	3	0	1
33.	IGH Business Advisory Services d.o.o., Janka Rakuše 1, 21740013729, Zagreb	6	4	2	0	0
34.	King ICT d.o.o., Buzinski prilaz 10, 67001695549, Buzin	6	4	1	0	1
35.	Magnum Supra d.o.o., Vukovarska 36, 38176145202, Dubrovnik	6	2	1	3	0

**The table shows the appellants with six or more resolved appeals, who lodged their appeals independently or as members of bidder consortiums.*

2.17. The Most Frequent Reasons for Lodging an Appeal and the most Frequent Irregularities Identified by the State Commission

The most frequent reasons for filing an appeal and irregularities identified by the State Commission are largely repeated from year to year.

In appellate procedures conducted before the State Commission, the following most common reasons for filing an appeal can be singled out:

- non-compliance of procurement documentation with legislation in force (mostly in the part related to the description of the subject of procurement, technical specifications, criteria for qualitative selection of the economic entity and award criteria)
- omissions of the contracting authority during the examination and evaluation of tenders
- non-compliance of the selected bidder's tender with the conditions and requirements from the procurement documentation
- incorrect application of the provisions on supplementation, clarification/explanation, completion of tenders and submission of the necessary information or documentation
- violation of the principles of public procurement
- unlawfulness of the decision to annul the public procurement procedures

The Most Frequent Irregularities Found by the State Commission

For the purposes of this report, the most frequent irregularities found by the State Commission will be divided into those committed by bidders (2.17.1. Specific Bidder errors) and those committed by the Contracting Authority (2.17.2. Specific Contracting Authority Errors).

2.17.1. Specific Bidder Errors:

- submission of a tender that is not drawn up in accordance with the conditions and requirements from the procurement documentation (mostly in terms of proving the absence of grounds for disqualification, proving the criteria for qualitative selection of economic operator, proving compliance with the prescribed technical specifications of the procurement subject and errors in costing)

- supplementing and clarifying the tender contrary to statutory restrictions (amending the bid)

2.17.2. Specific Contracting Authority Errors:

- unclear, dubious and contradictory procurement documentation;
- prescribing technical specifications in a way that unjustifiably restricts competition
- describing the subject of procurement, i.e. prescribing technical specifications, in a way that gives advantage to a certain economic entity;
- prescribing criteria for the selection of an economic operator that exceed the minimum levels of competence;
- incorrect determination of the criteria for selection of the tender (criterion of the most economically advantageous tender);
- deviation from the conditions and requirements in the procurement documentation during the examination and evaluation of tenders;
- omissions of the contracting authority when determining the (non)existence of grounds for disqualification;
-
- incorrect application of the provisions on supplementing and clarifying the bid (Articles 293 and 263 of the PPA 2016);
- non-transparency of examination and evaluation of tenders (the non-transparency of the analytical presentation of the required criteria for the qualitative selection of the economic operators and the submitted documents, and the non-transparency of the analysis of valid offers according to the selection criteria.)

2.17.3. The Most Frequent Appeal Allegations

The largest number of appeals is lodged in the procurement documentation phase and in the award decision phase. In view of this, the following is a presentation of the most frequent appellate allegations in these two stages of the procedures.

2.17.3.1. The Most Frequent Appellate Allegations Relating to Procurement Documentation

The most frequent reasons for contesting procurement documentation given in appeals lodged are:

- description of the subject of procurement and technical specifications, in the context of favouring a specific economic operator or restrictions on competition ie, creation of unjustified barriers to competition;
- prescribed conditions, and evidence of capacity (especially in terms of technical and professional capacity);
- prescribed selection criteria (criterion of the most economically advantageous tender);
- unclear, dubious and contradictory procurement documentation;
- prescribed deadline for the bid submission and extension of the deadline;
- technical specifications formulated contrary to statutory provisions (in terms of reference to a specific brand, equivalence, criteria for assessing equivalence);
- prescribed conditions and requirements that must be met in accordance with special regulations or professional rules.

2.17.3.2. The Most Frequent Appellate Allegations Relating to Award Decision

The most frequent reasons for contesting award decisions given in lodged appeals are:

- (non) compliance with the technical specifications of the subject of procurement;
- (non) compliance with the requirements of technical and professional capacity;
- (non) compliance with (other) conditions and requirements from procurement documentation;
- application of Articles 263 and 293 of the PPA 2016 (concept of supplementation and clarification/explanation of the tender);
- application of the provisions on the reliance of the economic operator on the capacity of other entities;
- examination and evaluation of tenders in relation to the award criteria (criterion of the most economically advantageous tender) - irregularity of scoring;
- application of the extremely low tender concept;
- proving the (non) existence of grounds for disqualification.

2.18. The Number of Motions to Indict filed

The State Commission Act, in Article 3, paragraph 4, defines the competence of the State Commission for filing motions to indict for misdemeanours prescribed by that Act, and other laws and regulations governing the field of public procurement. During 2021, the State Commission did not submit a single indictment for a misdemeanor.

2.19. Total Fees Paid for Initiating Appellate Procedures

Under Article 430 of the PPA 2016, the appellant in procedures before the State Commission pays a fee for initiating the appellate procedures in the amount of:

Amount of Fee	For the Estimated Value of Procurement
HRK 5,000.00	to HRK 750,000.00
HRK 10,000.00	from HRK 750,000.01 to HRK 1,500,000.00
HRK 25,000.00	from HRK 1,500,000.01 to HRK 7,500,000.00
HRK 45,000.00	from HRK 7,500,000.01 to HRK 25,000,000.00
HRK 70,000.00	from HRK 25,000,000.01 to HRK 60,000,000.00
HRK 100,000.00	over HRK 60,000,000.00

Exceptionally, for an appeal against the procurement documentation, the appellant is obliged to pay a fee for initiating appellate procedures in the amount of HRK 5,000.00, regardless of the estimated value.

Revenues from fees for initiating appellate procedures are paid into the state budget. In 2021, a total of HRK 17,292,805.92 was paid into the state budget on the basis of the fee for initiating appellate procedures, which is about 61,28% more than the budget of the State Commission for 2021.

Budget revenues on this basis are increasing compared to 2020.

2.19.1. Revenues from the Administrative Fee for Initiating Appellate Procedures before the State Commission

Pursuant to Article 430 paragraph 8 PPA 2016, appellants are no longer obliged to pay administrative fees when lodging an appeal.

2.20. Other Relevant Indicators in Appellate Cases

Among the other relevant indicators in appellate cases in 2021, it is necessary to point out the effects of the application of the e-Appeals system, and the features of appellate cases of public procurement financed from EU funds and strategic investments, as well as the structure of such procedures.

2.20.1. Lodging an Appeal Electronically in Public Procurement

By introducing the possibility of lodging appeals by electronic means of communication, through the interconnected information systems of the State Commission and the EPPC of the Republic of Croatia (e-Appeal system), the requirements were met for improving the efficiency and shortening the length of appellate procedures.

This implies that in procedures in which an electronic appeal is lodged, communication with the parties is performed by electronic means of communication, which significantly speeds up procedural actions, and speeds up appellate procedures.

In the fourth year of the possibility of lodging an e-appeal, there was an increase in appeals filed through interconnected information systems of the State Commission and the Electronic Public Procurement Notice of the Republic of Croatia (e-Appeal system). Of the total number of appeals, 62.07% were lodged through the e-Appeal system, which is an increase of 7,80% compared to the previous year.

The advantages of the e-Appeal system are primarily the reduction of the decision-making period of the State Commission, so the deadline from receiving the appeal to rendering a decision in the proceedings in which the e-Appeal was lodged, was shortened by 13 days. This is an extremely significant reduction, considering that the State Commission has to render its decision in a very short period of time.

Furthermore, the importance of e-Appeals became even more emphasized in 2020 and 2021, which were marked by the COVID-19 pandemic. Namely, the possibility of lodging an appeal digitally in the form of an e-Appeal, enabled the exercise of the right to appeal without the need to come directly to the State Commission or to an authorized postal service provider. This was especially important in situations where most businesses resorted to so called work from home or work at a separate place of work. In addition, an additional advantage of the e-Appeal system is the achievement of additional savings, not only for the State Commission, but also for the parties to the appeal procedure, since all further communication of the State Commission with the parties these cases takes place through the e-Appeals module of the EPPC of the RC.

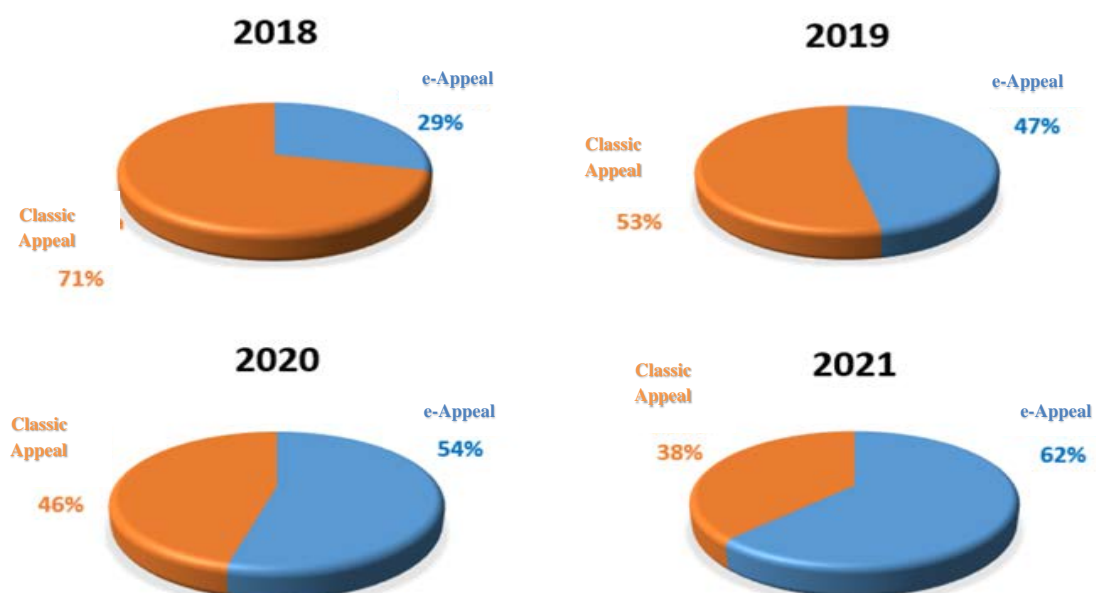
The e-Appeals system has significantly eased the daily work of the State Commission because in the procedures in which the appeal was filed in the form of an e-Appeal, all submissions in the appeal procedure are submitted through the EPPC of the RC and thus the entire file of the appeal procedure (appeal, conclusions of the State Commission and statements of the parties with all attachments) is in within the e-Appeal module in the EPPC of the RC. Therefore, the employees of the State Commission that are in charge of specific case, can access them remotely at any time through the EPPC of the RC, and this option greatly contributed to efficiency of the State Commission.

The e-Appeal system additionally enables automatic downloading of data related to the public procurement proceeding, the parties and regarding appeal allegations, into the internal application of the State Commission in workable form. All of this enables further work on the received appeal almost without paper. This contributes to the efficiency of the State Commission's work and the reduction of the administrative burden of State Commission's employees who are in charge of work on a particular case, and facilitates and accelerates the process of rendering the decisions.

2.20.1.1. The Number of e-Appeals Received in 2021

Type of Procedures	Total Number of Appeals Received	Number of e-Appeals Received	%
Public procurement	1157	730	63,09
Concessions	19	-	-
Public-private partnership	-	-	-
Total	1176	730	62,07

Overview of the growth trend of Appelas through the e-Appelas system from 1 January 2018 to the end of 2021 shows a constant growth in the number of complaints filed through the e-Complaint system.



2.20.1.2. The Length of Appellate Procedures Initiated by an e-Appeal

Period	e-Appeal (Number of Days)	All Procedures (Number of Days)
Average time from the date of completion of appellate cases to the rendering of a decision	7	12
Average time from receipt of the appeal to the rendering of a decision	14	27
Average time from the date the appeal is deemed orderly to the rendering of a decision	12	23

The table shows that the average length of appellate procedures, in cases where an e-Appeal was received, is shorter for 13 days than the average length of appellate procedures in all cases received in 2021.

Although modest at first, it can be concluded that over the years the expected effect of filing an e-Appeal against the total length of the appellate procedures, was achieved. These excellent results are an incentive to the State Commission for the further improvement of business processes with special emphasis on the further digitalization of the appeals procedure. The State Commission proposed, in this direction, amendments to the Public Procurement Act 2016, which were accepted and which provide the e-Appeal as a mandatory and exclusive way of filing an appeal in the procedures of public procurement, granting of concessions and selection of a public-private partner.

2.20.2. The Characteristics of Public Procurement Cases Financed from EU funds

	Number of Procedures Published in 2021. (Classifieds)	Number of Proceedings in Which Appeal was Lodged in 2021.	%
All procedures	12214	825	6,75
Procedures financed from EU funds	1753	332	18,94

The total number of public procurement procedures which were first announced in 2021, was 12,214. Of this number, 1,753 public procurement procedures were financed from European Union funds. The State Commission reviewed 332 procedures financed from European Union funds (18.94%) during the 2021.

In 2021, there was an increase in the number of public procurement procedures financed from European Union funds, which were the subject of an appeal procedure before the State Commission. Thus, in 2020, 16.23% of these procedures were reviewed, while in 2021, 18.94% were reviewed. In general, the actions of the State Commission in all appeal proceedings are aimed at preventing illegality, while in appeal proceedings that control public procurement procedures co-financed from EU funds, in addition to the above actions of the State Commission, have added value - preventing the imposition of financial corrections, which further protects the budget. From the aforementioned data, it is clearly visible that there was a significant increase, by 42.49%, in appeal procedures in which controlled public procurement procedures were co-financed with funds from the European Union. There is also an increase in public procurement procedures co-financed by funds from the European Union in the total number of published public procurement procedures.

2.20.2.1. The Length of Public Procurement Cases Financed from EU Funds

Period	EU Funds (Number of days)	All Procedures (Number of days)	EU Funds (Number of days)	All Procedures (Number of days)
	2020	2020	2021	2021
Average time from the date of completion of appellate cases to the rendering of a decision	11	13	6	12
Average time from receipt of the appeal to the rendering of a decision	25	30	12	27
Average time from the date the appeal is deemed orderly to the rendering of a decision	23	26	11	23

Regarding the average length of procedures in appellate cases financed from European Union funds, it should be noted that in 2021 the average time from receiving an appeal to rendering a decision was shortened by 13 days since the same average time in 2020 was 25 day.

It should be noted here that the speed of resolving cases, no matter how important, especially in proceedings financed from EU funds must not lead to a reduction in the quality of decisions of the State Commission, so it is important to point out that during 2021 the number of decisions of the State Commission, that were annulled by the High Administrative Court, was significantly reduced. It should be pointed that the data in the table above, refer to all the urgent cases conducted before the State Commission.

Urgent cases are appellate procedures conducted in accordance with the legislation governing the field of public procurement and concessions, and are related to the implementation of

strategic investment projects; appellate public procurement procedures related to projects financed in whole or in part by European Union funds, and appellate public procurement procedures in the field of defence and security. Appellate procedures, which are fully or partially financed by the European Union, account for the largest proportion of urgent cases, and shortening the time limit for resolving these cases contributes to the total shortening of the length of public procurement procedures, which is important since contracting in such procedures is subject to short time limits.

2.20.2.2. The Structure of Appellate Cases Financed from EU funds

In 2021, the State Commission received a total of 1176 appeals, of which 332 appeals related to public procurement procedures financed from European Union funds.

For the purposes of this Report, the cases received and resolved in 2021 are analyzed, which were financed from European Union funds, i.e. 312 of them.

Type of Decision	Number	%
Appeal granted	131	41,98
Appeal dismissed on merits	102	32,69
Appeal dismissed	69	22,12
Termination of procedures	10	3,21
TOTAL	312	100

Acting on Appeals regarding the public procurement procedures that are financed from EU funds, the State Commission dismissed on merits the Appeals in 102 Appeal cases, which represents 32.69% of the total number of appeals filed in these proceedings. Comparing with the data presented in the Work Report for 2020, a slight increase of 2% can be observed in 2021 in relation to granted appeals.

2.20.2.3. Annulment Structure (the Decisions, Procedures and Actions of Contracting Authorities Affected by Unlawfulness)

Subject of Annulment	Number	%
Procurement documentation	25	19,08
Award decision	92	70,23
Annulment decision	13	9,92
Procedures	1	0,77
TOTAL	131	100

With regard to annulling decisions, it is evident that the State Commission mostly annuls the award decision (70.23%), or annuls the part of the procurement documentation affected by unlawfulness (19.08%), while in one case it annulled the entire public procurement procedure. It is clear from these data that a decision by the State Commission granting an appeal exceptionally required the conduct of the entire public procurement procedures from the beginning again, but effect of the decision is to remand the case to the contracting authority to correct the unlawfulness identified in the phase of examination and evaluation of the tenders (if it is a matter of annulment of award decision), or changes to the unlawful part of the procurement documentation and continuation of the procedures (if it is a matter of annulment of part of the procurement documentation).

The fact that the State Commission exceptionally only in one appeal procedure annulled the entire procurement procedure, is extremely important in order to shorten the overall duration of procurement procedures financed from EU funds, given that in these procurement procedures withdrawal of funds from the European Union is related to contracting within certain deadlines. The elimination of established irregularities, regardless of whether the decision or the public procurement procedure has been annulled, results in the elimination of possible financial corrections by the competent authorities.

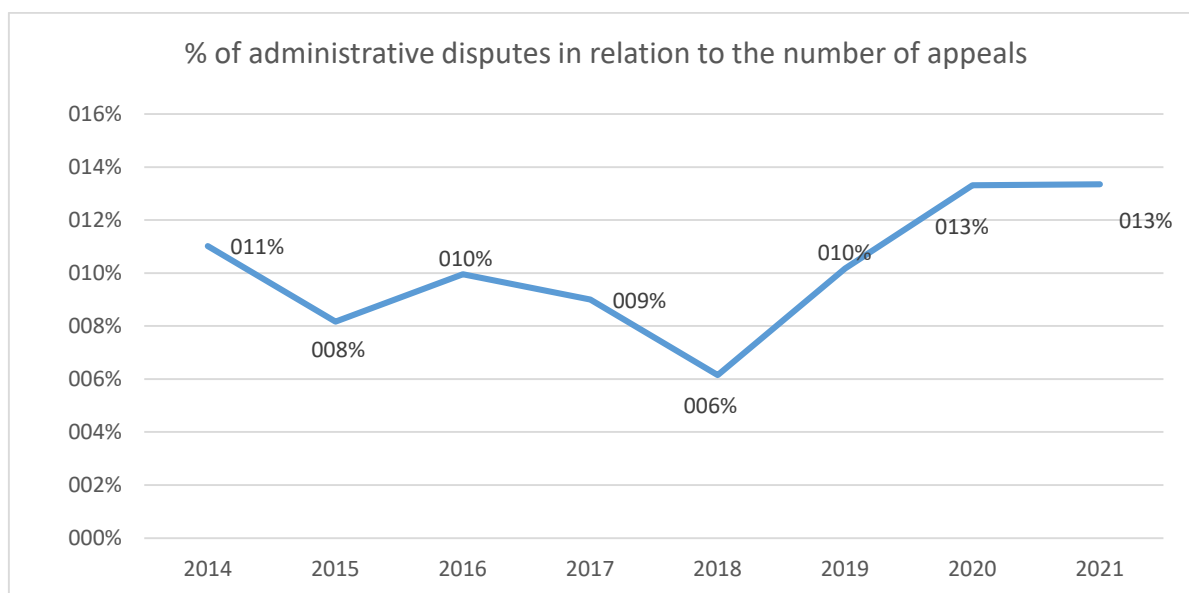
3. ADMINISTRATIVE DISPUTES AGAINST DECISIONS BY THE STATE COMMISSION

In 2017, the High Administrative Court, pursuant to Article 434, paragraph 1 of the PPA 2016, was granted jurisdiction to decide in the first instance in administrative disputes against decisions by the State Commission.

The tables and graphs below provide an overview of the number of administrative disputes and the types of decisions rendered in administrative disputes.

3.1. The Number of Administrative Disputes against State Commission's Decisions

Year	Number of Appeals	Number of Administrative Disputes	%
2021	1176	157	13,35
2020	1089	145	13,31
2019	1209	123	10.17
2018	1170	72	6.15
2017	945	85	8.99
2016	1135	113	9.95
2015	1137	93	8.17
2014	1315	145	11.02



In 2021, the number of administrative disputes continued to show increasing trend, which is a consequence of the fact that the High Administrative Court took over the competence to decide on lawsuits against decisions of the State Commission and also of possible perceptions that there is an increased court efficiency in making decisions. The low number of administrative disputes in 2018 is a possible consequence of the delay in legal protection before the High Administrative Court, which lasted from the adoption of the PPC 2016 to February 5, 2019. After 2018, there is a clear trend of continuous increase in the percentage of decisions of the State Commission challenged before the High Administrative Court, which may further indicate an increase in confidence of procurement participants regarding the quick and efficient exercise of legal protection before the administrative court. In 2019, that is, until the legal protection before the High Administrative Court became operational, disputes against the decisions of the State Commission lasted for several years.

3.2. The Number and Structure of Decisions in Administrative Disputes in 2021

The structure of decisions of the High Administrative Court in relation to the decisions of the State Commission from 2021 is given below.

Decisions by the High Administrative Court		
Type of Decision	Number	%
Action dismissed on merits	138	87,90
Action dismissed	7	4,46
Termination of administrative dispute	4	2,55
Action granted, State Commission's decision annulled and the court rendered its own decision in the administrative matter	7	4,46
Action granted, State Commission's decision annulled and the case remanded to the State Commission	1	0,64
TOTAL	157	100

The data show that in 2021 an extremely small number of decisions of the State Commission, which were the subject of the dispute before the High Administrative Court, were annulled, i.e. a large number of decisions of the State Commission, which were the subject of the dispute, were confirmed by decisions in a form of dismissal on merits, dismissal termination of the administrative dispute (94.90%). If we take into account the total number of decisions made by the State Commission during 2021 (1176), it should be noted that of this total number, an extremely small share of decisions was annulled by the High Administrative Court (0.68%).

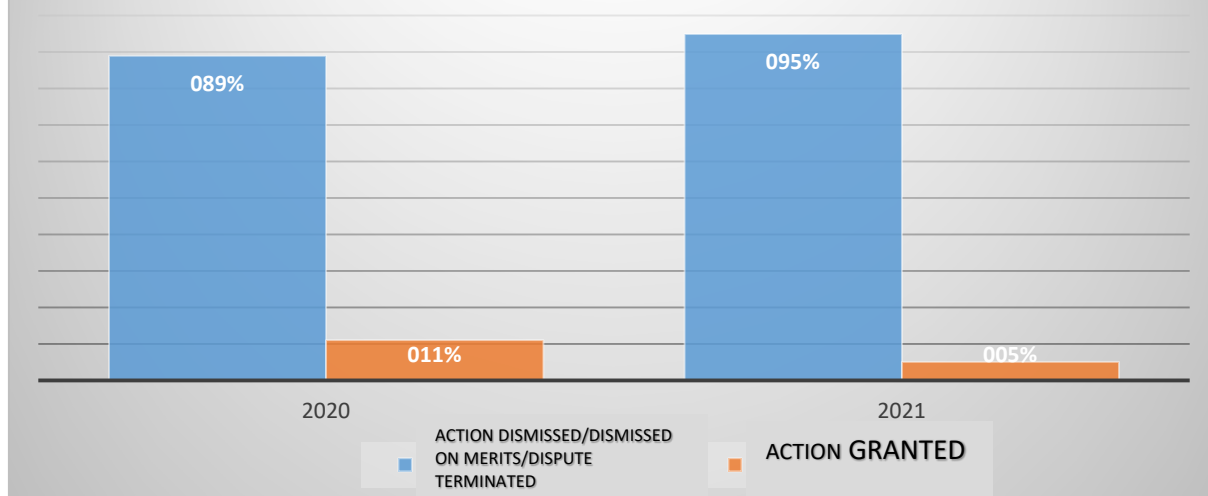
Below is a comparative overview of data on administrative disputes in 2021 with data on administrative disputes in 2020. This comparative overview differs from the data given in the Annual Report of the State Commission for 2019, as the Annual Report presents data related to all decisions received in 2019, which relate to the decisions of the State Commission from different years (therefore, data on all decisions received in the period from 1 January 2019 to 31 December 2019).

The above-mentioned data were also presented in previous Annual reports of the State Commission, since administrative disputes in the first instance according to the PPA 2016 lasted for several years before the High Administrative Court took over the competence over those disputes.

Since the High Administrative Court now resolves cases in a much shorter time, it is possible to present data in connection to the year of the State Commission's decision.

Decisions of the High Administrative Court - comparative view				
	2020		2021	
Type of Decision	Number	%	Number	%
Action dismissed on merits	116	80,00	138	87,90
Action dismissed	10	6,90	7	4,46
Termination of administrative dispute	3	2,07	4	2,55
Action granted, State Commission's decision annulled and the court renders its own decision in the administrative matter	16	11,03	7	4,46
Action granted, State Commission's decision annulled and the case remanded to State Commission	-	-	1	0,64
TOTAL	145	100	157	100

Structure of the High Administrative Court's decisions



The data show a significant decrease in the number of decisions of the State Commission annulled by the High Administrative Court in 2021 compared to 2020, i.e. an increase in the number of decisions of the State Commission confirmed by decisions regarding actions dismissed on merits, action dismissed, and terminating the administrative dispute.

4. ASSESSMENT OF THE SITUATION IN REVIEW PROCEDURES AND PUBLIC PROCUREMENT IN GENERAL

In accordance with the State Commission Act, the obligatory content of the report on the work of the State Commission is both the assessment of the situation in legal protection and the assessment of the situation in public procurement. In this way, the State Commission has the authority, but also the responsibility on the basis of data available in the appeal procedure, to point out certain phenomena, regularities and trends that have been observed, and use them to point out existing problems in practice, but also use this data as a basis for proposing the improvements of the normative framework and practice in procurement procedures in order to further improve the existing public procurement system and legal framework.

In the report for 2020, the State Commission presented certain proposals for improving the system of legal protection with the aim of reducing cases of abuse of the appeals procedure, and all in order to make it impossible for economic operators, who have no real intention to seek the legal protection against the illegal actions of the contracting authority, to lodge an appeal in the time period immediately before the opening of bids in order to use the instrument of legal protection to achieve some other goals in relation to the public procurement procedure. At the same time, in several recent work reports, the State Commission pointed to the positive effects of e-Appeals and proposed the introduction of lodging the appeals in this way as an obligation, not just a possibility. These proposals of the State Commission, which were pointed out in the reports of previous years, were included in the Proposal of the Law on Amendments to the Public Procurement Act, which is in the process of being adopted at the time of the preparation of this Work Report, so in this sense these proposals will not be presented again in this Report considering that the purpose of those proposals has been achieved.

4.1. Assessment of the Situation in Public Procurement in General

As during 2020, and in 2021 the public procurement system and the legal protection system were exposed to unexpected challenges related to the COVID 19 pandemic, but also to the consequences of devastating earthquakes that hit the Republic of Croatia. For these reasons, it is important to note that the entire report of the State Commission for 2021, including the part related to the assessment of the state of public procurement, should be viewed especially in the context of these extraordinary circumstances.

In the fifth year of application of the PPA 2016, it can be stated that the application of the institutes that were introduced by this law, has stabilized. Certain positive effects are visible as a result of new institutes in the law, as well as certain shortcomings of the legal framework of the public procurement system and in the foreseeable future it is necessary to consider the possibility of a more comprehensive update of the legal framework in order to simplify certain institutes that have proven to be problematic in practice. In this sense, the State Commission during 2021 sent a series of proposals for legal improvements of the system, to the competent ministry.

When assessing the state of public procurement presented by the State Commission in its report, it should be additionally noted that by publishing its decisions, the State Commission creates a public perception of the state of public procurement. For this reason, and in order to objectively review the state of public procurement, it is necessary to keep in mind that the share of public procurement procedures controlled by the State Commission in 2021 was 6.75% of the total number of public procurement procedures published in the EPPC of the RC, so the conclusions expressed in the assessment of the situation in this report are based solely on assessment of the procedures that were subject to review before the State Commission.

For the sake of proper insight into the state of public procurement in general, the State Commission notes that public procurement procedure in a narrower sense, which in accordance with the provisions of the PPA 2016 begins with the publication of an invitation for tenders in the EPPC of the RC, and ends with the enforceability of an award decision or an annulment decision, is only one part of the public procurement process in a broader sense, which begins with public procurement planning and ends with monitoring of the execution of contract/framework agreement.

According to the opinion of the State Commission, the public procurement system should be viewed as a whole given that deficiencies in the preparation of the public procurement procedure become visible in the implementation of the public procurement procedure in the narrower sense and may lead to the absence of expected public procurement results. Therefore, since no significant changes were observed in comparison to previous years, State Commission considers it necessary to emphasize again in this report that there is need for further development of the public procurement system, and in that sense, certain areas are listed below in relation to which, on the basis of procedures conducted upon appeals before the State Commission, it was assessed that there was a need to pay special attention to them.

These are the following areas:

- strategic approach to the development of the procurement system in the Republic of Croatia;
- strengthening the Central State Administration Body responsible for public procurement policy.

4.1.1. Strategic approach to the development of the procurement system in the Republic of Croatia

As stated in the previous annual report on the work of the State Commission, the development and maintenance of an once-established efficient, transparent and efficient public procurement system is an ongoing task. The State Commission in its reports in previous years pointed to the fact that the European Commission has been publishing the Single Market Scoreboard for two years in a row, in which it marks the Republic of Croatia as "green" in the field of public procurement. The above means that based on the analysis of several indicators related to public procurement procedures, it was assessed that the state of public procurement in the Republic of Croatia is satisfactory, which represents the best of the three possible state assessments. This puts the Republic of Croatia among the small number of countries rated as "green" according to the mentioned criteria. It is these data that place responsibility on the stakeholders of the public procurement system for making additional efforts to keep the established procurement system up to date with new public procurement policies and guidelines as well with the related tools that are being developed within the European Union. Achieving these goal requires constant engagement, strategic thinking on further development and improvement of the public procurement system in the Republic of Croatia, and coordinated action of all stakeholders in achieving the set goals.

The focus and public perception related to public procurement is concentrated in that part of the procurement procedure which is subject to control before the State Commission, while it is often neglected that the public procurement process in a broader sense begins with procurement planning, which includes, among other things, market research, definition of technical specifications, the bidder capacity requirements, etc., and ends with the execution of the public procurement contract.

Public procurement planning largely ensures the realization of the principle of "best value for money" in the later stages of the procedure, however this part of the procurement process in a broader sense is relatively neglected. During appeal procedures, it can often be noticed that

certain public procurement procedures are not carefully prepared, that the contracting authority maybe did not conduct quality market research, and this results in deficiencies in the technical specifications, contract execution conditions, and an unclear definition of the procurement documentation, which may result in a final procurement, for which it is questionable whether it meets the contracting authority's needs, and whether it represents the best value for money. During the work on appeal cases it can be concluded that adequate planning of the procurement process, and quality and timely market research, reduce the need for frequent changes in procurement documentation after the start of the procurement procedures, and thus reduce the number of potential appeals that stop procedures, which further reduces the total time required to conduct the procurement procedures and contracting. This is particularly important in European-funded procurement procedures where contracting within a certain time frame is a precondition for withdrawing funds.

The State Commission, as well as in the Work Report for 2020, notes that in this sense it is necessary to undertake an additional effort in order to consider taking a strategic approach to the further development of public procurement in the Republic of Croatia through the adoption of a single Public Procurement Development Strategy which would include a plan for the development and strengthening of key institutions in the public procurement system, measures for further digital transformation of the entire public procurement process, measures for the development, modernization and differentiation of the system of education and training of experts in public procurement, all for the purpose to adequately professionalize public contracting authorities in order to reduce errors and irregularities in public procurement procedures as well as financial corrections in procedures financed from European funds. Defining the basic goals of the further development of the public procurement system would ensure the continuity and sustainability of the once set goals and measures for the development of the public procurement system and key institutions within that system, as well as the coordinated and systematic action of all stakeholders within the system in the direction of achieving the set goals.

4.1.2. Strengthening the Central State Administration Body responsible for Public Procurement Policy

Through several recent work reports the State Commission indicated the necessity of strengthening the Central State Administration Body responsible for Public Procurement Policy (now the Directorate for Trade and Public Procurement Policy of the Ministry of the Economy

and Sustainable Development) which plays a key role in designing the further development of the public procurement system.

After the year 2020, due to the merger of the two ministries, the former Directorate for Public Policy became the Sector for Public Procurement Policy and the projected number of workers was reduced. Considering the stated view of the State Commission on the need for further intensive work on the development of the public procurement system, as in the Work Report for 2021, it should again be pointed out that there is need to strengthen the capacity of the Public Procurement Policy Sector and find ways to attract adequate professionals to these positions to provide professional support to all stakeholders in the public procurement system and a sufficient level of expertise and capacity for the timely implementation of a large number of tasks covered by the competence of organizational units within the Ministry of Economy and Sustainable Development in charge of public procurement policy.

In addition to the development of the system, the Public Procurement Policy Directorate must take two other important aspects of its competence into account, namely: administrative supervision of public procurement procedures, and the system of training of all participants in public procurement process.

4.1.2.1. Administrative control

As already pointed out in this Report, upon receiving the appeals, the State Commission controlled only 6.75% of public procurement procedures in 2021. Bearing that in mind, the role of administrative oversight conducted by the Sector for Public Procurement Policy becomes crucial to ensure lawfulness (in the form of preventive measures, but also as a corrective factor) in public procurement procedures that were not subject to review by the State Commission.

While the public procurement procedure itself, namely public procurement in a narrower sense (starting with the call for tenders and ending with the enforceability of the award decision), is subject to the greatest public scrutiny and the highest degree of control and transparency, through the possibility of appealing to the State Commission at all stages of the procedures with a suspensive effect in the form of stopping the procurement procedures, on the other hand, the execution of public procurement contracts themselves still remains outside the focus of the activities of control bodies.

Although the possibility of challenging amendments to a contract before the State Commission exists, such appeals are extremely rare, during 2021 not a single appeal aimed at annulling the contract amendment was filed.

In order to ensure adequate control of this part of the public procurement process, it is necessary to urgently strengthen administrative capacities of the Public Procurement Policy Directorate, which, in addition to the power to initiate misdemeanour proceedings, also has the power to lodge appeals before the State Commission in the public interest.

4.1.2.2. Education and certification system

From the data provided in this Report, and especially from the part of the data that shows the high proportion of appeals that were granted during 2021 (47%), it is evident that the contracting authorities are still faced with difficulties in the application of the PPA 2016 and according to the opinion of this state body, errors of the contracting authority can be prevented by more frequent and strengthened administrative supervision, but also by systematic education.

Although the system of education and certification of participants in public procurement procedures is one of the most respected and better quality systems in EU Member States, and is mentioned in many European Commission documents as an example of good practice from the aspect of Contracting authorities, but at the same time it is necessary to point out the need to upgrade the system, to build and improve the professional capacity and knowledge of experts in the preparation and implementation of procurement procedures, as well as to align the existing certification system with the latest tools developed within the European Union (eg ProcurCompEU - the European competency framework for public procurement professionals).

In its previous reports, the state commission indicated the need for continuation of horizontal cooperation of all bodies that perform a certain role in review of the lawfulness of public procurement procedures related to the allocation of EU funds, for the purpose of the uniform interpretation of legal provisions, taking into account that such cooperation should not jeopardize the independence of those bodies in carrying out their tasks. The State Commission once again emphasizes the importance of this kind of cooperation, in order to prevent uneven interpretation of legal provisions and, in this sense, raise the level of legal certainty.

4.2. Assessment of the situation regarding legal protection

As already stated, in previous reports the State Commission presented a whole series of proposals for the improvement of legal protection, which proposals are mostly focused on the introduction of e-appeal as a mandatory way of lodging the appeals, all in order to further speed up appeals procedures and reduce abuses. Proposal are also directed on other minor changes in the rules of the appeals procedure that could largely prevent abuses of the appeals procedure. Considering that all the presented proposals were included in the Draft Law on Amendments to the Public Procurement Act, which was referred to the adoption procedure, the State Commission will not repeat the presented proposals in this Report

During 2021, in the circumstances of the pandemic, and thanks to the exceptional efforts of employees of the State Commission, but also due to the high degree of digitalization of procurement procedures, the appeal procedure and internal processes within the State Commission, the legal protection system functioned without significant problems.

The data presented above show that during 2021 (after a one-year decrease in the number of reported appeals in 2020), the number of complaints again increased by about 8% compared to 2020.

In addition to the increase in the number of reported complaints during 2021, it should be noted that it is still observed a visible progress in the quality of appeals, with a very large number of appellate allegations and many pieces of evidence attached, supporting those allegations (opinions of experts in certain areas, technical documentation, references to judgments by the European Court of Justice, and the like.).

In the further part of this Report, four aspects that represent the basis for assessment of the situation in review during 2021, will be elaborated in particular:

- increasing efficiency and legal certainty in the system of legal protection;
- reduction of funds for the work of the State Commission.

4.2.1. Increasing efficiency and legal certainty in the system of legal protection

The quality of each system of legal protection in public procurement is evaluated according to three basic characteristics - efficiency, availability and predictability of legal protection. From

its foundation until today, the State Commission has been making continuous efforts in order to maximize the realization of these three characteristics in the system of legal protection.

Pursuant to the PPA 2016, the State Commission is obliged to render a decision within 30 days from the submission of an orderly appeal.

In the last few years, thanks to the exceptional work engagement of employees as well as the additional digitalization of internal processes, the State Commission has managed to achieve exceptional results in the sense of continuous shortening of the average deadline for resolving appeal cases.

Thus, in 2020, the average time to resolve appeal cases was shortened to 26 days from the receipt of an orderly appeal, while in 2021, this period was further shortened to 23 days, despite an 8% increase in the number of appeal cases. At the same time, in 2020 and 2021, the average duration of appeal cases marked as urgent (procedures financed from EU funds, strategic investment projects, procurement procedures for defense and security purposes) was additionally shortened, so the average solving time for these cases in 2020 was shortened to 23 days from the day of receipt of an orderly appeal, while in 2021 the solving time was further shortened to an average of 11 days, which are truly exceptional results in the given circumstances.

It should be noted here that the mentioned continuous shortening of the average time for resolving appeal cases did not affect the quality of the decisions made, which is evident from the number of decisions of the State Commission that were annulled by the High Administrative Court.

After 2019, the High Administrative Court, after several years of stagnation in administrative court protection, started working effectively, and the harmonization of the practice of the State Commission with the positions of the High Administrative Court has begun, related to various legal concepts from the PPA 2016.

During 2020 and 2021, additional efforts were made to harmonize further the decisions of the State Commission and the positions of the High Administrative Court which is evident from the data on the number of annulled decisions of the State Commission by the High Administrative Court which show that in 2020 out of the total number of decisions in appellate cases received in 2020, extremely low number of decisions were annulled by the High

Administrative Court – only 1, 47%, while in 2021 that number was further reduced to 0.68%. The above contributes to the increase of the legal security, and to the trust of the procurement procedure participants regarding the efficiency and predictability of the legal protection system, and undoubtedly contributes to the strengthening of the entire public procurement system, but also has a stimulating effect on economic operators, especially small and medium-sized enterprises, in terms of their easier decision to participate in public procurement procedures.

4.2.2. Reduction of financial resources for the work of the State Commission

Although the State Commission has, through the demonstrated results of its work, especially in the last few years, justified its role as "guardian of legality" in public procurement procedures and through its work realized the meaning of an institution that has preventive and corrective anti-corruption action, the financial resources provided on an annual basis for the work of the State Commission were drastically reduced during 2021.

Thus, in 2021, HRK 50,000.00 was provided for the professional development of employees, which represents 0.47% of the budget of the State Commission, i.e. 0.29% of the amount of fees (for initiating the appeal procedure) paid to the State Budget of the Republic of Croatia. During 2021, HRK 92,324.00 was provided for investments in computer programs, which represents 0.86% of the budget of the State Commission, i.e. 0.53% of the amount of fees paid for initiating the appeal procedure to the State Budget of the Republic of Croatia. Therefore, these are insignificant amounts in comparison to the amounts that are collected on an annual level in the form of the fee for initiating the appeal procedure. Additionally, it should be noted that investment in professional training of employees and maintenance of existing computer programs, as well as investment in further development of digitalization of the appeal process, is a prerequisite for maintaining the achieved results in the work of the State Commission. The State Commission is a specialized institution that operates in the field of preventive anti-corruption policy and it is designated as such in the Corruption Prevention Strategy for the period from 2021 to 2030 ("Official Gazette", number: 120/21). The Strategy defines, as a special goal, the "Strengthening of anti-corruption potential in the public procurement system" with special emphasis on the capacities of the State Commission.

The need to strengthen the institutional structure and efficiency of the State Commission by strengthening and improving the professional and anti-corruption education of members and

civil servants, and by improving and forming a system of integrity in public administration by **strengthening expertise through training** in appropriate educational and other institutions in the European Union, was also highlighted.

After 18 years of work of the State Commission, the need for continuous additional training and improvement of professionals in the field of public procurement is clearly visible, who must necessarily have the appropriate qualifications, training, skills and experience required for their level of responsibility. The State Commission, as a quasi-judicial body and authority in the field of public procurement, is the creator of legal practice in the field of public procurement and with its decisions significantly influences the implementation of public procurement procedures, not only directly making decisions in specific public procurement procedures, but also indirectly in such a way that its decisions are a source of knowledge during the implementation of public procurement procedures on which all participants in the procedures rely. Therefore, it is necessary to continuously and consistently work on, not only maintaining, but also further improving the quality of knowledge of persons participating in the legal protection procedure. It is necessary to look at the legal framework of public procurement through the prism of EU directives, which regulate this area, while respecting and learning from the good practices of other comparative bodies in the EU. Therefore, very often high-quality educations for experts in the field of public procurement take place outside the borders of the Republic of Croatia, which of course means higher costs for these educations. Without continuous investment in the competences, knowledge and skills of the expert services of the State Commission in various areas to which public procurement procedures apply (insurance, medical equipment, construction works, computer equipment and the like), in an environment in which the parties to the appeal procedure invest significant resources to argue their positions in this narrowed legal area, it is very difficult to ensure the maintenance of efficiency and quality of work at the achieved level.

In the context of the reduction of financial resources for the work of the State Commission, it is necessary to draw attention to the fact that during the last years, in regard of fees for the initiation of the appeal procedure, the State Budget regularly receives an amount far greater than the total funds that are annually provided for the work of the State Commission. Thus, for example the State Budget collected, in 2020, HRK 16,016,391.52 for the fee for initiating the appeal procedure, while HRK 17,292,805.92 was collected in 2021.

Therefore, considering the significance and role of the State Commission in maintaining the dynamics of economic activities and large infrastructure projects in the planned and foreseen terms, as well as the effect that timely and effective resolution of appeals has on the withdrawal of EU funds and the prevention of financial corrections in projects financed by European funds, it should be noted that if adequate financial resources are not provided for the work of the State Commission in the coming years, it is not certain that the achieved efficiency of work and the quality of decisions will be able to be maintained at the achieved level.

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Zagreb, 15 June 2023

PRESIDENT

Maja Kuhar